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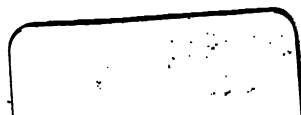
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PLAIN DIRECTIONS
TO
NAVAL OFFICERS
AS TO THE LAW
OF
SEARCH, CAPTURE AND PRIZE

UNDER
THE LATE CONVENTION, ORDERS IN COUNCIL,
PRIZE ACT, &c.



BY
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LONDON:
W. G. BENNING & Co., LAW BOOKSELLERS,
43, FLEET STREET.
1854.

LONDON :
RAYNER AND HODGINS, PRINTERS,
10, Fetter Lane, Fleet Street.

LAW OF SEARCH, CAPTURE, AND PRIZE.

CHAPTER I.

EXEMPTIONS UNDER ORDERS IN COUNCIL.

FIRST as to Russian merchant vessels sailing from any port of Great Britain or the British possessions.

By an order in council bearing date the 29th day of March, 1854, it is provided, that Russian merchant vessels in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May, 1854, for loading their cargoes and departing from such ports or places, and that such vessels if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear, that their cargoes were taken on board before the expiration of the above term : provided, that nothing herein contained shall extend or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian government. By another order bearing date the 7th day of April, 1854, the same exemption from capture, subject to the same exceptions, is extended to Russian merchant vessels being at the date of publication of the last mentioned order in any ports or places in her Majesty's East Indian territories under the Government of the East India Company, or within any of her Majesty's foreign or colonial possessions, if on examination of their papers it shall appear that their cargoes were taken on board

before the expiration of thirty days from the time of the publication of this order in such Indian territories or foreign or colonial possessions.

Secondly as to Russian merchant vessels sailing from foreign ports.

By orders in council bearing date the 29th day of March and the 7th day of April, 1854, it is provided that any Russian merchant vessel which, prior to the 29th day of March 1854, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions or in any of her Majesty's Indian territories or foreign or colonial possessions shall be permitted to enter such port or place and to discharge her cargo and afterwards forthwith to depart without molestation: and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

By another order in council bearing date the 15th day of April, 1854, this indulgence is extended in respect of vessels sailing from the Baltic or White Sea, and it is provided that any Russian merchant vessel, which prior to the fifteenth day of May, one thousand eight hundred and fifty-four shall have sailed from any port of Russia situated either in or upon the shores of the Baltic Sea or of the White Sea bound for any port or place in her Majesty's dominions, shall be permitted to enter such last mentioned port or place and to discharge her cargo and afterwards forthwith to depart without molestation: and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

These orders being in the nature of a general licence to all merchant vessels of the enemy falling within their terms are to be construed upon the same principles of construction as licences. They are consequently not to be extended beyond the plain intention of the grantor. The plain intention of

the orders is to relieve enemy's merchant vessels falling within their terms from liability to capture arising from their national character. They are placed upon the same footing, but upon no better footing, than neutral vessels: and they would be liable to capture under the same circumstances, that would render neutral vessels liable. Thus any such vessel attempting a breach of blockade would be liable to capture notwithstanding the order. In addition to this the terms imposed by the order must be strictly complied with.

Russian merchant vessels having sailed from any port other than those of the Baltic or White Sea are not protected, unless they have sailed before the 29th March, 1854. Such vessels sailing from the Baltic or White Sea are not protected unless they have sailed before the 15th May, 1854. They are not protected in any breach of blockade; nor if they have on board contraband or enemy's despatches or naval or military officers of the enemy: nor are they protected unless at the time of sailing they were bound to some port in her Majesty's territories or possessions: nor even in sailing to any such port not being the port of their destination: nor are they protected on their return voyage unless in ballast, for the licence implied in the order does not extend to a return cargo; to protect such a cargo there must be a special licence.

Thirdly, as to neutral or friendly vessels.

By an order in council bearing date the 15th day of April, 1854, after reciting that her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to her by the law of nations; it is provided that all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in her Majesty's dominions all goods and merchandize whatsoever, to whomsoever the same may belong; and to export to any port or place in her Majesty's dominions to any port not blockaded any cargo or goods, not being contraband of war, or not requiring

a special permission, to whomsoever the same may belong: and that save and except only as aforesaid all the subjects of her Majesty and the subjects or citizens of any neutral or friendly state shall and may, during and notwithstanding the present hostilities with Russia, freely trade with all ports and places wheresoever situate which shall not be in a state of blockade, save and except that no British vessel shall under any circumstances whatsoever, either under or by virtue of this order or otherwise, be permitted or empowered to enter or communicate with any port or place which shall belong to or be in the possession or occupation of her Majesty's enemies.

The effect of this order is to relieve neutral or friendly vessels, having enemy's property on board, from being captured and sent into port for the adjudication of their cargoes. It also puts aside, during the present war, all those delicate and difficult distinctions which arise by the law of nations from the circumstance of a neutral vessel being engaged in the coasting, fishing, or other privileged trade of the enemy. Under this order such circumstances cease, during the present war, to impress a hostile character upon a neutral ship; for such trade is expressly sanctioned by the terms of the order. But the order does not waive any belligerent right in respect of breach of blockade, or the carriage of contraband or enemy's despatches, or military or naval officers of the enemy.

In order to entitle a vessel to the benefit of this order, it is necessary not only that it should be sailing under a neutral or friendly flag, but also that it should be neutral or friendly property. The questions which the belligerent rights waived by this order leave to be considered, are:—first, the law in respect of search and capture; secondly, of the national character of vessels; thirdly, of blockade; fourthly, of contraband; fifthly, of licences; sixthly, of ransom; seventhly, of the rights of captors.

These appear to be the only subjects which fall within the

scope of a work which is confined to the law of prize, as far as it regards the duties of naval officers. For the purposes of the present inquiry these subjects may be concisely treated; for it is unnecessary to consider those circumstances which are sufficient to relieve from confiscation a vessel which is liable to capture. Such circumstances are matters of further proof, and concern not the captors, but the prize court. All that a naval officer has to consider is, first, whether the ship's papers are genuine; and, secondly, whether upon examination of those papers there be probable grounds for believing the ship to be liable to capture. If there be such grounds apparent on the face of the papers, supposing them to be genuine, or if there be probable ground for believing them to be spurious, or for suspecting that there has been subtraction or spoliation of papers, the capture is justifiable, although the owner may be entitled to restitution upon proof of facts not appearing upon the ship's papers.

CHAPTER II.

OF THE RIGHT OF SEARCH AND CAPTURE.

THE right of search is not affected by the orders in council. The right of visiting and searching merchant ships on the high seas—whatever be the ships, whatever be the cargoes, whatever be the destinations—is an incontestable right of the commissioned cruisers of a belligerent nation. Till they are visited and searched, it does not appear what the ships or the cargoes or the destinations are; and it is for the purpose of ascertaining these points that the necessity of this right of visitation and search exists(*a*). Every vessel is bound to submit to visitation and search, whether it be the vessel of a friend, or of an ally, or even of a subject; and submission may be compelled, if necessary, by force of arms, without giving claim for any damages incurred thereby, if the vessel upon visitation should be found not liable to be detained. No circumstances can dispense with this obligation. A vessel is not exempted either by its built or by its flag; such circumstances furnish no proof of the national character of the vessel; and if a vessel be neutral a belligerent is entitled to ascertain whether there is contraband of war or enemy's despatches or military or naval officers of the enemy on board. If the master of a neutral vessel resists by force, that is a ground of confiscation (*b*), and consequently of capture. This

(*a*) *The Maria*, 1 Rob. 340.

(*b*) Valin. Comm. iii. 9. XII. Ir. des Pr. iv. 1. *The Topaz*, 2 Acton, 20. Vatt. iii. § 114.

rule applies, whether the resistance be actual or whether it be constructive, as by sailing under hostile or neutral convoy (*c*).

The common law right of search has been regulated, and the right of sailing under neutral convoy has been created and regulated by several treaties.

First, with regard to the right of sailing under convoy it is provided, between Great Britain and Sweden and Denmark, by the treaty of St. Petersburg of June, 1801, acceded to by Denmark and Sweden respectively as principals in 1802; that the owners of all merchant vessels destined to sail under convoy of a ship of war shall produce to the commander of the convoying ships their passports and certificates, or sea letter, in the form annexed to the present treaty: that when any ship of war having under its convoy any merchant ships shall be met by any ship of war of the other contracting party, who shall then be in a state of war, to avoid all disorder they shall keep out of range of gunshot, unless the state of the sea or the place of meeting shall make a nearer approach necessary; and the commander of the ship of the belligerent power shall send a boat on board the convoying ship, where proceedings shall be had for the mutual verification of papers and certificates, which ought to shew, on the one part, that the neutral ship of war is authorized to take under its convoy such and such merchant vessels of its nation laden with such a cargo and for such a port; on the other part, that the ship of war of the belligerent party belongs to the royal or imperial navy of their Majesties.

Which verification having been made, no visitation shall take place, if the papers are found to be regular, and there exists no valid ground of suspicion. In the opposite case the commander of the neutral ship of war (being thereunto

(*c*) *The Muria*, 1 Rob. 340. *The Elsabe*, 4 Rob. 408, per Story, J., *arguendo*, 9 Cranch, 440-443.

duly required by the commander of the ship of the belligerent power) must bring to and detain his convoy during the time, that shall be necessary for the visitation of the vessels, which compose it; and he shall have the right of naming or delegating one or more officers, who shall assist in the visitation of the said vessels, which shall be made in his or their presence on board each merchant vessel conjointly with one or more officers appointed by the commander of the ship of the belligerent party.

If it should happen that the commander of the ship of the power at war, having examined the papers found on board and interrogated the master and crew of the vessel, shall see just and sufficient reasons for detaining the merchant vessel for the purpose of further search, he shall notify that intention to the commander of the convoying ship, who shall be empowered to appoint an officer to remain on board the vessel thus detained, and to assist in the examination of the cause of its detention. The merchant vessel shall be immediately carried into the nearest and most convenient port of the belligerent power, and the further inquiry shall be conducted with all possible diligence, &c. On the other hand, the convoying ship shall not be allowed, on any pretext whatsoever, to oppose by force the detention of any merchant vessel by the ship of war of the belligerent power (*d*).

It was necessary to recite this treaty on account of the formalities which it prescribes. But for any substantial purpose it is but solemn trifling; for it provides no better security for merchant vessels than is provided by the common law of nations, except as to privateers and vessels furnished with letters of marque, which have no place in the present war.

By the treaty of 1661 between Great Britain and Sweden (*e*),

(*d*) Mart. Trait. Supp. ii. 476; iii. 192. 196. For the forms, see Appendix.

(*e*) Chalmers, Tr. 1. 53. Jenkinson, Tr. 1. 166.

and by the treaty of 1670 between Great Britain and Denmark (*f*), it is provided, That upon the production of the passports or safe conducts and certificates specified in the treaties, no inquiry shall be made into goods, ships, or men; but if such certificate be not produced, or there be any other just or urgent cause of suspicion, then the ship ought to be searched, which shall only be deemed justifiable in this case. It has been held, that the circumstance of a number of vessels bound to various parts of the Mediterranean laden with iron, hemp, pitch and tar, intending to sail along the coasts of the enemy under the protection of an armed frigate, was sufficient to excite the just and grave suspicion, which the treaty refers to. The treaty supposes an inquiry for certain papers, and if they are not exhibited, or there is any other just and strong ground of suspicion, then the ship is to undergo search. The treaty therefore recognises the rights of inquiry and search; and the violation of those rights is no less a violation of the treaty than it is of the general law of nations (*g*).

By the treaty of Utrecht (*h*) between France and Great Britain, it is provided, that men of war meeting any merchant ship shall remain out of cannon shot, and shall send a boat, and shall enter her with two or three men only, to whom the master or commander of such ship shall shew his passport concerning the property thereof, made out according to the form annexed to the present treaty (*i*); and the ship which shall exhibit one shall have free passage, and it shall be wholly unlawful to molest, search, or compel her to quit her intended course. But that merchant ship of the other party which intends to go to a port at enmity with the other confederate, or concerning whose voyage or the sort of goods on board there may be just suspicion, shall be obliged to exhibit, not

(*f*) Chalmers, Tr. 1. 86. For forms, see Appendix.

(*g*) *The Maria*, 1 Rob. 371.

(*h*) Chalmers, 1. 390.

(*i*) See Appendix.

only her passports, but her certificates, expressing that they are not the kind of goods prohibited which are specified in the nineteenth article. But if one party in the exhibiting of the above certificates, mentioning the particulars of the things on board, shall discover any goods of the kind, which are declared contraband or prohibited by the nineteenth article of this treaty, designed for a port subject to the enemy of the other, it shall be unlawful to break up the hatches, &c., unless in the presence of the officers of the Court of Admiralty. Hence it appears, that by this treaty the right of visitation continues in case of suspicion for the purpose of examining the certificate required to be exhibited; and where contraband articles appear on the face of the certificate, the right of capture and bringing in for adjudication, because otherwise the vessel could not be brought under the supervision of the officers of the Court of Admiralty.

The provisions of the treaty of 1668 (*k*), between England and Holland, are to the same effect; but the fourteenth article further provides, that if the master of the ship shall be content to deliver the said contraband goods to the captain of the belligerent ship, in that case the master shall by no means be hindered from continuing his course and the design of his voyage. The same provisions are repeated in the treaty of 1674 (*l*).

By the treaty between England and Morocco, 1761 (*m*), it is agreed, that when any ship of war of the King of Great Britain shall meet any ship or vessel of the Emperor of Fez and Morocco, or of his subjects, on the captain of such ship shewing a passport from the governor of the city to which he belongs, with a certificate from the English consul, or in case of his death or absence from the major part of the English

(*k*) Chalmers, 1. 162.

(*l*) Ib. 177.

(*m*) Ib. 11. 345.

merchants residing there, in such case he shall be permitted to pursue his voyage without impediment or injury.

Secondly, as to capture.

Resistance to capture is a ground of condemnation. It is the duty of a cruiser to treat the crew of an apparently neutral ship, which he takes possession of for further inquiry into her real character, with all reasonable indulgence; and it is the duty of neutrals under that possession to take care that they do not put themselves in the condition of enemies by resorting to such conduct as can be justified only by the character of enemies. Hence, when an attempt was made, without arms and without bloodshed, to dispossess the captors, the ship and cargo were condemned (*n*). But when the crew put on board the captured vessel were unable to navigate her, and thereupon the captain resumed his command, and refusing to carry the vessel into the port designated by the captors, continued her course according to his own instructions, it was held that this conduct did not amount to a rescue, nor render the ship on that ground liable to confiscation. For the duty of navigating the ship to such port as the captors may please to direct is not imposed upon the master and crew of a captured vessel. They owe no service to the captors, and are still to be considered answerable to the owners for their conduct. It is the duty, as well as the interest of the captors, to make the capture sure; and if they neglect it from any anxiety to make other captures, or from thinking the force furnished sufficient, it is exclusively at their peril (*o*). So where resistance arose from ignorance of war, and from mistaking a cruiser for a pirate (*p*).

(*n*) *The Dispatch*, 3 Rob. 278. *The Washington*, 2 Acton, 30, n. *The Franklin*, 2 Acton, 106.

(*o*) *The Pennsylvania*, 1 Acton, 33. Vid. Consolato, c. 27, § 5. Capmany, 1. 276. Collect. Mar. p. 3.

(*p*) *The St. Juan Baptista*, 5 Rob. 33.

The capture of vessels within the territory of a neutral state, or within three miles of the coast, or the capture of ships beyond the territory by a cruiser or by the boats of a cruiser, which is lying within the territory is illegal with respect to the neutral sovereign, but not with respect to the enemy. The owner of the ship cannot avail himself of that plea; but if the claim be made by a neutral power in a state of clear and indisputable neutrality at the time when the capture was made, the court will decree restitution (*q*).

Regularly a captor is bound to bring in a captured vessel for adjudication. If it be impossible to bring in, the next duty of a captor is to destroy enemy's property. If it be doubtful whether it be enemy's property and impossible to bring it in, the safe and proper course is to dismiss. If a neutral or protected ship is destroyed by a captor either wantonly or under an alleged necessity in which she herself is not directly involved, the captor or his government is answerable for the spoliation. If an enemy's ship is protected by a licence, and the captor knows of the licence, either from its production or from any other circumstances which ought to have satisfied him of its existence, he is liable to the whole extent of the mischief done. But, if the existence of the licence is not disclosed to him and he has no sufficient means to inform himself, he is not a wrong-doer: and he is not responsible (*r*). But where a vessel protected by a licence was destroyed under an erroneous opinion, that the licence produced was invalid; because the captor could not spare men to take her to a British port, nor allow her to go to her own port, because she would have furnished important information to the enemy; it was held, that these circumstances might make the destruction of the vessel

(*q*) *The Purissima Conception*, 6 Rob. 47. *The Etruser*, 3 Rob. 162
(*n*). *The Eliza Ann*, 1 Dods. 244. *The Anna*, 5 Rob. 373. *The Twee Gebroeders*, 3 Rob. 162.

(*r*) *The Felicity*, 2 Dods. 381.

a meritorious act, as far as the government of the captor was concerned, but furnished no reason why the owner should be a sufferer: and restitution in value was decreed with costs and damages (*s*), where the licence was doubtful and the capture therefore justifiable restitution was decreed without costs (*t*). Where a capture is not justifiable, a captor is answerable for every damage (*u*). Where the capture is justifiable, a captor is only responsible for due diligence. Hence, where the prize master refused to take a pilot, and the ship and cargo were consequently lost, restitution in value was decreed (*w*). But where the captors have put a pilot on board, and the damage is not assignable to any want of that controul which the captor is bound to exercise over the crew, he is exonerated from any accident occurring in the navigation of the vessel (*x*).

A captor is not entitled to send his prize to any port that he may choose to select. It must be a convenient port. A convenient port is one, in which the claimant may proceed to adjudication without unreasonable delay, in which the vessel may lie in safety, without unloading its cargo. Hence where a vessel was sent to Shetland instead of any of the principal northern ports of the kingdom; by which unnecessary delay in proceeding to adjudication was incurred demurrage, and the expense of hearing a petition for costs and damages were allowed (*y*). Where a vessel was taken to Jersey, which was not a port fit for the reception of such a vessel, which was not safe in the outer port and could not be taken into the inner port without breaking bulk, and the captors proceeded to unliver her cargo: they were held liable for the damage sustained (*z*).

(*s*) *The Acteon*, 2 Dods. 48.

(*t*) *The William*, 2 Dods. 55.

(*u*) Per Cur. *The William*, 6 Rob. 316. *The Nemesis*, Edw. 50. *The Triton*, 4 Rob. 78. Per Cur. *The William*, 6 Rob. 316.

(*w*) *The William*, 6 Rob. 319. *The Der Mater*, 3 Rob. 129.

(*x*) *The Portsmouth*, 6 Rob. 317, n.

(*y*) *The Portsmouth*, 6 Rob. 317, n. *The Peacock*, 4 Rob. 185.

(*z*) *The Washington*, 6 Rob. 275.

In the present war the duties of the cruisers of each ally, in respect of joint captures and in respect of captured vessels being the property of the subjects of either ally, are distinctly expressed in the instructions annexed to the convention between the two countries.

By the convention, Art. 1, it is provided: that when a joint capture shall be made by the naval forces of the two countries, the adjudication thereof shall belong to the jurisdiction of the country whose flag shall have been borne by the officer having the superior command in the action.

Art. 2. When a capture shall have been made by a cruiser of either of the two allied nations, in the presence and in the sight of a cruiser of the other, such cruiser, having thus contributed to the intimidation of the enemy and the encouragement of the captor, the adjudication thereof shall belong to the jurisdiction of the actual captor.

Art. 3. In case of the capture of a merchant vessel of one of the two countries, the adjudication of such capture shall always belong to the jurisdiction of the country of the captured vessel; and the cargo shall be dealt with, as to the jurisdiction, in the same manner as the vessel.

Art. 5. The commanders of the vessels of war of their Majesties shall, with regard to the sending in and delivering up of prizes, conform to the instructions annexed to the present convention, and which the two governments reserve to themselves to modify by common consent, if it should become necessary.

Art. 7. The crews of the captured vessels shall be dealt with according to the laws and regulations of the country to which the present convention attributes the adjudication of prize.

The instructions annexed to the convention are addressed to the commanders of ships of war of the two countries.

Art. 1. Whenever, in consequence of a joint action, you

are required to draw up the report or *procès-verbal* of a capture, you will take care to specify exactly the names of the ships of war present during the action, as well as the names of their commanding officers, and, as far as possible, the number of men embarked on board those ships at the commencement of the action, without distinction of rank.

You will deliver a copy of that report or *procès-verbal* to the officer of the allied power who shall have had the superior command during the action, and you will conform yourself to the instructions of that officer as far as relates to the measures to be taken for the conduct and adjudication of the joint captures so made under his command.

If the action has been commanded by an officer of your own nation, you will conform yourself to the regulations of your own country, and you will confine yourself to handing over to the highest officer in rank of the allied power, who was present during the action, a certified copy of the report, or of the *procès-verbal*, which you have drawn up.

Art. 2. When you shall have effected a capture in presence of and in sight of an allied ship of war, you will mention exactly, in the report which you will draw up, when the capture is a ship of war; and in the report or *procès-verbal* of the capture, when the prize is a merchant vessel, the number of men on board your ship at the commencement of the action, without distinction of rank, as well as the name of the allied ship of war which happened to be in sight, and, if possible, the number of men embarked on board that ship, likewise without distinction of rank. You will deliver a certified copy of your report or *procès-verbal* to the commander of that ship.

Art. 3. Whenever, in case of a violation of blockade of the transport of contraband articles, of land or sea troops of the enemy, or of official despatches from or for the enemy, you

find yourself under the necessity of stopping or seizing a merchant vessel of the allied nation, you will take care to—

1. Draw up a report (or *procès-verbal*) stating the date, the place, and the motive of the arrest, the name of the vessel, that of the captain, the number of the crew, and containing besides an exact description of the state of the vessel and of her cargo.

2. Collect and place in a sealed packet, after having made an inventory of them, all the ship's papers, such as registers, passports, charter-parties, bills of lading, invoices, and other documents calculated to prove the nature and the ownership of the vessel and her cargo.

3. Place seals upon the hatches.

4. Place on board an officer, with such number of men as you may deem advisable, to take charge of the vessel and to ensure its safe conduct.

5. Send the vessel to the nearest port belonging to the power whose flag it carried.

6. Deliver up the vessel to the authorities of the port to which you shall have taken her, together with a duplicate of the report (or *procès-verbal*), and of the inventory above mentioned, and with the sealed packet containing the ship's papers.

Art. 4. The officer who conducts the captured vessel will procure a receipt proving his having delivered up the vessel, as well as his having delivered the sealed packet, and the duplicate of the report (or *procès-verbal*) and of the inventory above-mentioned.

Art. 5. In case of distress, if the captured vessel is not in a fit state to continue its voyage, the officer charged to conduct to the port of the allied power a prize made in the merchant service of that power, may enter a port of his own country or a neutral port; and he will deliver his prize to the local

authority, if he enters a port of his own country, and to the consul of the allied nation if he enters a neutral port, without prejudice to the ulterior measures to be taken for the adjudication of the prize. He will take care, in that case, that the report, or *procès-verbal*, and the inventory which he shall have drawn up, as well as the sealed packet containing the ship's papers, shall be sent to the proper court of adjudication.

It is to be remarked upon the last clause of this article, that the proper court of adjudication is the Admiralty Court of the allied power to whose merchant service the captured vessel belongs.

Art. 6. You are not to consider as prisoners of war, and you will give free permission to land to all women, children, and persons not belonging to the military or maritime profession, who shall be found on board the captured vessels.

With this exception, and those which your own security may suggest, you will not permit any person to be removed from on board the vessel; and in all cases you will retain the master, supercargo, and others whose evidence may be essential to the adjudication of the prize.

You will treat as prisoners of war all persons whatever who may be found on board the enemy's vessels, with the exception above-mentioned in section 1.

[The exception last above-mentioned refers to all women, children, and persons not belonging to the military or maritime profession; and although it is not expressed, it seems to be implied, that they are to be treated in the same manner as if they had been found on board captured merchant vessels of a neutral or allied nation, and to have free permission to land].

You will place no other restriction on the liberty of allied or neutral subjects found on board allied or neutral vessels, than such as may be necessary for the security of the vessel.

With respect to your own countrymen, you will treat them according to the general instructions you have received, and you will in no case deliver them up to a foreign jurisdiction.

The persons who may have been exceptionally removed from the captured vessels shall afterwards be sent back to their own country, if they belong to the allied nation; if they are neutrals or enemies, they shall be treated as if they had been found on board vessels captured by you separately.

Every kind of stratagem, such as disguising men and ships, spreading false news, and the like, is lawful (*a*). To sail and chase under false colours may be an allowable stratagem of war, but firing under false colours is what the maritime law of England does not permit, for it may be attended with very unjust consequences. It may occasion the loss of lives of persons who, if they were apprised of the real character of the cruiser, might, instead of resisting, implore protection (*b*). Nor is anything lawful which is done in violation of any convention, whether expressed by words or symbols known in the usage of war. Such conventions suspend the state of war within the limits of their operation; and any violation of them, such as acts of hostility committed during a truce, or under cover of a flag of truce, or against persons protected by a flag of truce, or pass or safe conduct, would not be acts of stratagem, but of perfidy (*c*). Thus, where an English vessel was taken, and some of her crew being put on board an English cartel ship, with their own consent, to be conveyed to England, to be there exchanged for Dutch prisoners, seized the boat of the cartel ship and recaptured their own vessel: it was held, that this recapture was a piratical act effected through a violation of

(*a*) Grot. iii. 1, viii. 4 and 5.—iii. 1, xiii. 2.—iii. 5, iv. Puff. viii. 6, vi. Vatt. iii. §§ 177, 178.

(*b*) *The Peacock*, 4 Rob. 187. Valin. Tr. iv. i. xiv.

(*c*) Grot. iii. 24, iii. v. Puff. viii. 6, vi. Bynk. Q. J. P. i. 1. Heinecc. El. ii. § 202. Vatt. iii. § 178.

contract by persons pretending to act upon rights which they had parted with, as well by their own engagements as by the nature of the situation in which they were placed. The Court held the enemy to be aggrieved by this act, and considering the interest, which the Crown has in preserving the sanctity of good faith in all public relations to foreign states, it decreed the property to be delivered to his Majesty, to be by him disposed of as his sense of justice towards the injured government might direct (*d*).

The principal use of safe conducts or papers, in modern times, is for the protection of cartel ships employed for the exchange of prisoners of war. Ships are to be protected in this office both in carrying prisoners and in returning from that service. A ship going as a cartel ship is not protected by mere intention on her way from one port to another of her own country for the purpose of taking upon herself that character when she arrives at the latter port. The security is derived from the special safe conduct. Yet, when ships without any safe conduct were taken acting *bonâ fide* as cartel ships, it was held that it would be too strict to hold them liable to confiscation, and they were restored subject to the payment of expences (*e*). The actual existence of war is not necessary to give effect to contracts of cartel. They may be entered into upon contemplation of hostilities; and protection granted by persons executing the functions of executive government abroad is to be considered as granted under the authority of the crown, if not renounced by the crown in subsequent actions or declarations (*f*). But the privilege of cartel being confined to the intercourse of hostile states, has place only between belligerents, and is not applicable to the transactions of a neutral state acting for its own purposes

(*d*) *The Mary*, 5 Rob. 200.

(*e*) *The Daiffee*, 3 Rob. 139. *La Gloire*, 5 Rob. 492.

(*f*) *he Carolina*, 6 Rob. 336.

without reference to the existence of a war with any other country (g).

In the following chapter will be considered the national character of ships, which renders them liable to be seized and brought in for adjudication under the order of council granting general reprisals against the ships, vessels, and goods of the Emperor of all the Russias and of his subjects or others inhabiting within any of his countries, territories, or dominions. In considering the right of capture, it is not necessary to treat of the national character of goods, because goods on board an enemy's vessel must necessarily be sent in for adjudication with the vessel, and enemy's goods on board a neutral or friendly vessel are exempted from capture by the orders in council of the 28th of March and 15th of April 1854.

(g) *The Rose in Bloom*, 1 Dod. 60.

CHAPTER III.

OF THE NATIONAL CHARACTER OF SHIPS.

THE national character of a vessel is determined by its flag and pass; or, secondly, by the character of its employment; or, thirdly, by the residence of its owner. Under the head of ownership will be considered the validity of transfers of title.

1st. It is a known and established rule with regard to a vessel, that if she is navigating under the pass of a foreign country, she is considered as having the national character of that nation under whose pass she sails. She makes a part of its navigation and is in every respect liable to be considered as a vessel of that country (*a*). A vessel sailing under the colours and pass of a nation, though adopted in time of peace and not in contemplation of war, is considered as clothed with the national character of that nation. Ships have a peculiar character impressed upon them by the special nature of their documents, and have always been held to the character, with which they are so invested, to the exclusion of any claims of interest which persons living in neutral countries may actually have in them. This principle was strongly recognised in the case of a ship taken on a voyage from Surinam to Amsterdam, and documented as a Dutch ship. Claims were

(*a*) Per Cur. *The Vigilantia*, 1 Rob. 13. *The Diana*, 5 Rob. App. 2. *The Ariadne*, 2 Wheaton, 143. *The Caledonia*, 4 Wheaton, 100.

given for specific shares on behalf of persons resident in Switzerland; and one claim was on behalf of a lady, to whom a share had devolved by inheritance. In that case it was held, that sailing under a Dutch flag and pass was decisive against the admission of any claim; and it was observed, that as the vessel had been enjoying the privileges of a Dutch character, the parties must be subject at the same time to the inconveniences attaching to it (*b*). By assuming the flag and pass of a foreign state persons expose themselves to a double disadvantage. It is a known rule of law, that when parties agree to take the flag and pass of a foreign country they are not permitted, in case any inconvenience should afterwards arise, to aver against the flag and pass to which they have attached themselves, and to obtain the benefit of their real character. They are likewise subject to this further inconvenience, that their real character may be averred against them by others. Thus, when a ship was sailing under a Swedish flag and pass, and was engaged in a trade lawful only to a ship entirely Swedish, and one-half of the ship belonged to British owners, she was condemned (*c*). So where a ship was sailing under the flag and pass of Portugal, but was proved by papers found concealed on board to be a Spanish ship (*d*). So where a Dutch vessel was sailing under the flag and pass of Knipphausen (*e*).

Secondly. A vessel may have a national character impressed upon her by her employment. A vessel belonging to neutral or friendly owners acquires the character of an enemy's vessel by conveying naval or military persons in the service of the enemy, or enemy's despatches.

(*b*) *The Elizabeth*, 5 Rob. 2. *The Vreede Scholtys*, 5 Rob. 5, n.

(*c*) *The Success*, 1 Dod. 131.

(*d*) *The Citade de Lisboa*, 6 Rob. 358.

(*e*) *Ibid.* n.

Thus, the carrying military persons to the colony of the enemy, who are there to take upon them the exercise of their military functions, will lead to condemnation; and the Court will not scan with minute arithmetic the number of persons who are so carried. The number of persons alone is an insignificant circumstance in the considerations, on which the principle of law upon this subject is built, since fewer persons of high quality and character may be of more importance than a much greater number of persons of lower condition. To send out one veteran general to take the command of forces might be a more noxious act than the conveyance of a whole regiment. If it has appeared to be of sufficient importance to the government of the enemy to send them, it must be enough to put the adverse government on the exercise of their right of prevention. The ignorance of the master can afford no ground of exculpation in favour of the owner, who must seek his remedy in cases of deception as well as force against those who have imposed upon him; otherwise such opportunities of conveyance would be constantly used, and it would be almost impossible, in the greater number of cases, to prove the knowledge and privity of the immediate offender (*f*). Thus, where a vessel was seized, on a voyage from Bourdeaux to New York, having on board a French officer of rank disguised as a merchant's clerk, and the master made an affidavit averring his ignorance: the Court observed, that the general rule must be held strong against the averment of ignorance, and that it was scarcely credible that the master could have been deceived with respect to the character of a military officer of high rank, so as to be imposed upon by the disguise of a merchant's clerk, which he had pretended to assume; and the ship was condemned (*g*). So where a

(*f*) *The Ororzembo*, 6 Rob. 430.

(*g*) *The Susan*, 6 Rob. 431.

neutral vessel under contract with the enemy's government was carrying a number of military and naval officers and mariners of all classes, being the relics of the crews of two vessels going back to the enemy's country, and still preserving their professional character and situation as part of the enemy's marine (*h*). But the principle has never been carried to the length of preventing a military officer in the service of the enemy from finding his way home in a neutral vessel if he be going merely as an ordinary passenger and not at the public expense (*i*).

So of the conveyance of enemy's despatches. Despatches are all official communications of official persons on the public affairs of the government. The comparative importance of the particular papers is immaterial, since the Court will not construct a scale of relative importance, which in fact it has no means of doing with any degree of accuracy: it is sufficient if they relate to the public business of the enemy, be it great or small. It is the right of the belligerent to intercept and cut off all communication between the enemy and his settlements. It is not to be said, therefore, that this or that letter is of small moment: the true criterion will be, is it on the public business of the state and passing between public persons on the public service? If individuals take papers coming from official persons and addressed to persons in authority and they turn out to be mere private letters, as may sometimes happen in the various relations of life, it will be well for them, and they will have the benefit of so fortunate an event. But, if the papers so taken relate to public concerns, be they great or small, civil or military, the Court will not split hairs and consider their relative importance. The Court will look only to the fact, whether the case falls within the

(*h*) *The Friendship*, 6 Rob. 420.

(*i*) *Per Cur. Ibid.* 428.

general description or not (*k*). Where a packet was put on board a ship bound from Bordeaux to New York, addressed to the prefect of the Isle of France, containing a letter providing only for the payment of that officer's salary; that was held a despatch (*l*). But where papers are communications from a person not clothed with any public official character, they do not come within the definition of despatches (*m*). And despatches from a hostile government to its ambassador or consul in a neutral state, which are not shewn to be of a hostile character; or from an ambassador of the enemy in a neutral country to his own government, are excepted from the general rule; because the neutral country has a right to preserve its relations with the enemy, and you are not at liberty to conclude that any communication between them can partake in any degree of the nature of hostility against you (*n*).

It is unnecessary to consider what amounts to proof of fraud: for it does not affect the right of capture. Even where the carrying of despatches is not fraudulent it subjects the vessel to be brought in for examination, and subjects the claimant to the payment of the captor's expenses (*o*).

Thirdly.

Where there is nothing particular or special in the conduct of the vessel itself, its national character is determined by the residence of the owner (*p*). Though the vessel be documented as a neutral vessel it will not be protected by its documents, if the domicile of its owner is hostile. A government may grant

(*k*) *The Caroline*, 6 Rob. 465. *The Aialanta*, 6 Rob. 440.

(*l*) *The Susan*, 6 Rob. 461, n.

(*m*) *The Rapid*, Edw. 228, via *The Caroline*, 6 Rob. 469.

(*n*) *The Madison*, Edw. 224. *The Caroline*, 6 Rob. 461.

(*o*) *The Vigilantia*, 1 Rob. 13.

(*p*) *The Caroline*, 6 Rob. 470. *The Rapid*, Edw. 221. *The Madison*, Edw. 226.

the privilege of a national character to vessels for the purposes of its own navigation, but cannot change the national character of a vessel to the prejudice of third parties (*q*). The same principle applies, where one of several joint owners is resident in the enemy's country: for his share is liable to confiscation and the vessel is subject to be brought in for adjudication of that share.

A ship cannot change its character during its voyage. Where the owner is an enemy when the vessel sails, he will not be entitled to restitution, when he becomes a subject before capture (*r*). The legal title to a ship can be asserted in the prize court as to those persons only, to whom a bill of sale regularly conveys it. Whatever equitable interests exist in other persons is immaterial; the court looks singly to the bill of sale as a document which is recognised by the law of nations: and the ownership must be decided by it. Where a bill of sale was produced, by which the legal property of a ship was vested solely in a person domiciled in the enemy's country, the ship was condemned as enemy's property without regard to the neutral domicile of some of the partners in his house of trade (*s*). The national character of a ship is not affected by any liens arising from private contracts or by bottomry bond or by any liability of the owner. Captors are supposed to lay their hands on the gross tangible property, on which there may be many just claims outstanding between other parties: but such claims can have no operation as to captors. Their rights of capture operate upon the property without regard to any liens or incumbrances to which the owner may be liable (*t*). The

(*q*) *The President*, 5 Rob. 277.

(*r*) *The Negotie en Zeewart*, cited in the *Dankebaar Africaan*, 1 Rob. 107.

(*s*) *San Jose Indiano*, 2 Gallison, U.S., 283. *The Sisters*, 5 Rob. 259.

(*t*) *The Mary Anna*, 6 Rob. 24. *The Tobago*, 5 Rob. 218.

title of a neutral vendee to a merchant vessel sold by the enemy in time of war is valid, where the property is bonâ fide and absolutely transferred so as to divest the enemy of all future interest in it (*u*). But such sales are always obnoxious to much suspicion, even when made under commission from neutrals resident in their own country. Probable ground of suspicion will justify capture; whether the suspicion arise from the presence of documents, which shew that the interest of the enemy is continued: or in the absence of documents, which are necessary under the circumstances of the case, to shew that the sale is genuine and absolute. Thus, where a vessel had been transferred to a neutral claimant under a condition to reconvey at the end of the war, the sale was held to be invalid, and the vessel was condemned (*v*). Where the contract for the sale of a vessel recited, that the seller was bound to his government under a penalty not to sell, unless under condition of restitution at the end of the war, and the neutral purchaser had undertaken to exonerate the vendor; it was held, that the transfer was collusive: that looking to the control, which the enemy's government and the vendor still retained over the property it was impossible to hold, that all the interest of the enemy was completely divested; and the ship was condemned (*w*). So where the documents are insufficient to prove the genuineness of the sale. Thus, where the pretended neutral purchaser was resident in the enemy's country, and the vessel had been a prize ship, and there was no proof of condemnation and the only evidence of the genuineness of the transaction was a formal bill of sale and receipt for part payment of the purchase-money and a note of the master for part payment of the residue, of which the signatures were genuine: but there was no explanation of the purchaser's residence in the enemy's

(*u*) *The Sechs Geschwistern*, 4 Rob. 100. Per Cur. 6 Rob. 399.

(*v*) *The Noyt Gedart*, 2 Rob. 137 (n).

(*w*) *The Sechs Geschwistern*, 4 Rob. 100.

country : the evidence was held not sufficient to prove a bonâ fide sale (*x*). Where a vessel is purchased from the enemy by agents in the enemy's country under commission from a neutral, the letter of procuration must be exhibited. It is not sufficient for a person to go before a magistrate and declare before him the commission under which he acts. It must be shewn by proper documents, that the agent was legally authorized to make the purchase (*y*). Where a vessel asserted to be transferred is continued under the former agency and in the former habits of trade ; these circumstances furnish conclusive evidence against the genuineness of the transfer (*z*).

The purchase of a ship of war by a neutral, while she is lying in a port to which she has fled for refuge is invalid. Nothing short of the acquiescence of the belligerent, in the measures of precaution taken to prevent such a vessel from finding her way back again into the navy of her own country, can give validity to such a purchase. Where a Dutch ship of war with eighteen guns and ammunition, of which fourteen guns and the ammunition had been taken out lying in the port of Bergen, into which she had been chased by a British frigate, and had there remained sealed for nearly three years, was purchased by a Sovereign Prince, Count Bentinck, Lord of Kniphausen, and was captured on her way to Holland under Khiphausen colours with a Dutch master and crew : she was condemned (*a*).

In the case of prize vessels, a bill of sale on board and a sentence of condemnation in a prize court are sufficient to establish a good title in all ordinary cases (*b*). Where a vessel has been captured and carried into a port of the enemy, a strong

(*x*) *The Bernon*, 1 Rob. 101.

(*y*) *The Argo*, 1 Rob. 158.

(*z*) *The Omnibus*, 6 Rob. 71. *The Jemmy*, 4 Rob. 31.

(*a*) *The Argo*, 1 Rob. 158.

(*b*) Per Cur. *The Countess of Lauderdale*, 4 Rob. 286. Valin. Tr. iv. 4. iv.

ground of presumption is laid, that the right of the former proprietor has been legally divested in a legal, regular, and effective manner; for the presumption is, that being so carried, the vessel has been subjected to legal condemnation (*b*). The same presumption arises in the case of a vessel captured and carried into a neutral port; since it has been the practice of prize courts to condemn vessels lying in neutral ports (*c*).

But the property is not charged without a legal condemnation (*d*). Hence condemnations by courts without jurisdiction are invalid (*e*); and condemnation by consular courts of the enemy sitting in a neutral country are invalid, except as against the enemy's subjects (*f*); though affirmed by a court having original or appellate jurisdiction (*g*). But a title under an invalid condemnation, or a purchase without condemnation, may be sustained by a sentence passed upon the circumstance of the original capture by a competent tribunal, before the invalid sentence has been impeached (*h*). The sentence of a competent tribunal, however unjustifiable or erroneous, is conclusive of title as in all foreign courts; for the grounds of the sentence cannot be examined by any court of co-ordinate jurisdiction (*i*). British vessels lose their character and become enemy's vessels when, after capture, they have been converted into ships of war, even though not regularly commissioned (*k*).

(*b*) *The Cornelia*, Edw. 244.

(*c*) *The Henrick and Maria*, 4 Rob. 63. *The Comet*, 5 Rob. 285. *Purissima Conception*, 6 Rob. 45. Kent Comm. i. 98.

(*d*) *Nostra Señora de los Angeles*, 3 Rob. 287.

(*e*) *The Thomas*, 1 Rob. 322.

(*f*) *The Flad Ogen*, 1 Rob. 134. *The Kierlighett*, 3 Rob. 96.

(*g*) *The Kierlighett*, 3 Rob. 96.

(*h*) *The Falcon*, 6 Rob. 194. *Williams v. Armroyd*, 7 Cranch, 423.

(*i*) *Williams v. Armroyd*, 7 Cranch, 423.

(*k*) *The Ceylon*, 1 Dod. 105. *L'Actif*, Edw. 185. *The Nostra Signora*, 3 Rob. 10. *The Georgina*, 3 Rob. 397.

British vessels trading to an enemy's port are still liable to capture, for the order in council of the 15th of April 1854 provides that no British vessel shall, under any circumstances whatsoever, either under or by virtue of this order, or otherwise, be permitted or empowered to enter or communicate with any port or place which shall belong to or be in the possession or occupation of her Majesty's enemies.

So of allied vessels; for by the general law of European states, and especially of France and England, all trading with the public enemy, without licence of the sovereign, is interdicted (*k*).

(*k*) Valin. Comm. iii. 6, § 3, tom. 2, p. 30, ed. 1760, Rochelle. *The Hoop*, 1 Rob. 169.

CHAPTER IV.

OF THE RIGHT OF BLOCKADE.

EVERY belligerent has a right to blockade the ports of his enemy; but in order to render neutral vessels liable to the penalty, which attaches to a breach of blockade, there must be, first, an actual blockade imposed by competent authority; secondly, notice thereof; thirdly, a violation of the blockade. There remains to be considered, fourthly, the period during which a vessel continues to be liable to capture for a breach of blockade.

First. A blockade is an act of sovereignty, and the commander of a king's ship cannot extend it (*a*). But the authority of a commander in an expedition will not be affected as to any but his own government by his having acted irregularly in entering upon it without orders. However irregularly he may have acted, the subsequent adoption of his acts by government will have the effect of legitimating them, so far as the subjects of other governments are concerned. In such a case a blockade imposed by a commander could not be impeached on the ground of want of regular authority; and however irregularly he might be deemed to have acted towards his own government, he is in no manner answerable to other states; and it is not open to subjects of other states to dispute the validity of the blockade (*b*). A mere procla-

(*a*) *Hendrick and Maria*, 1 Rob. 148.

(*b*) *The Rolla*, 6 Rob. 364.

mation that a place is invested, is insufficient to constitute a legal blockade (*c*); for that purpose it is necessary that the place should be invested by a competent force, so as to render it dangerous to attempt to enter it (*d*).

A blockade commences from the time a force is stationed to prevent communication (*e*). Where a vessel coming out of a blockaded port was captured by two armed ships about seven miles from the coast, it was argued, that this small number of vessels only was a proof that there was no actual blockade. But the court held, that it is not necessary that the whole blockading squadron should lie in one tier; nor is it material that a vessel has escaped the rest; that these ships appeared to have been in the exterior line; and that, if there had been only these, it would have been quite sufficient (*f*). So where a single frigate was employed on a blockade, where it appeared that the admiral on the station considered that ship completely adequate to the service to be performed (*g*). A legal blockade cannot exist where no actual blockade can be applied. Hence it does not extend to inland communication. On this ground a cargo sent by an internal canal navigation from Amsterdam to Embden with an ulterior destination to London was held not to be liable to confiscation by reason of the blockade of Amsterdam (*h*). If a blockade be not regularly maintained, but some unprivileged (*i*) ships are allowed to come out and others to go in, such a relaxation destroys the legal effect of

(*c*) *The Betsey*, 1 Rob. 93.

(*d*) *Per Cur. The Mercurius*, 1 Rob. 84.

(*e*) *The Naples*, 2 Dod. 284.

(*f*) *The Neptuneus*, 1 Rob. 170.

(*g*) *The Nancy*, 1 Acton, 63.

(*h*) *The Stert*, 4 Rob. 65. *The Julia*, 1 Dod. 169, n. *The Ocean*, 3 Rob. 297.

(*i*) As to what ships are privileged in coming out or going in, see section third of this chapter.

the blockade. If such ships are allowed to pass, others will have a right to infer, that the blockade is raised (*k*). Thus, where a master entered a port without any attempt made by the ships that were on the station to prevent him from going in, and in other cases no force had been applied for the purpose of enforcing the blockade, and permission was given to go in, it was held, that the purpose of blockade being to prevent access by force, if the ships stationed on the spot to keep up the blockade will not use their force for the purpose, it is impossible for a court of justice to say that there was a blockade actually existing (*l*). So, where a blockade was alleged to exist, and a vessel that had sailed out of the port in full view of the squadron that had before been employed in the blockade without being stopped, was seized some time afterwards in consequence of a subsequent notification; it was held, that there was no proof of actual blockade (*m*). But a temporary and forced secession of a blockading force from the accidents of winds and storms, is not sufficient to constitute a legal relaxation of a blockade (*n*). A blockade is to be considered as legally existing, though the winds occasionally blow off the blockading squadron. That is an accidental change, that must take place in every blockade; but the blockade is not thereby suspended, and the law considers an attempt to take advantage of such an accidental removal as an attempt to break the blockade, and as a mere fraud (*o*).

When a blockading squadron is driven off by adverse winds, neutrals are bound to presume that it will return, and

(*k*) Per Cur. *The Rolla*, 6 Rob. 373.

(*l*) *The Juffrow Maria Schroeder*, 3 Rob. 155. *The Vrouw Barbara*, 3 Rob. 158, n.

(*m*) *The Christina Margaretha*, 1 Rob. 61.

(*n*) Per Cur. *The Juffrow Maria Schroeder*, 3 Rob. 155.

(*o*) *The Columbia*, 1 Rob. 154. *The Frederick Molke*, 1 Rob. 86.

that there is no discontinuance of the blockade. But where a blockading squadron has been driven off by a superior force, there is no blockade actually existing. In such case the blockade and notification are extinct. The mere appearance of another squadron will not restore it, but the same measures are required for a recommencement that were required for the original imposition of the blockade (*p*). A blockade accompanied by public notification from the government of a belligerent country to neutral governments is presumed to continue, until its discontinuance has been notified in the same way (*q*).

Secondly, of Notice. Notice is of two kinds, constructive and actual.

Constructive notice is, where notification has been made to official persons, in which case a presumption of law arises, that it has been communicated to all persons to whom it ought to have been communicated in the course of official duty. Thus, when a blockade has been notified to the consul of a neutral state in the belligerent country, he is presumed to have communicated the notification to the consuls of his government in foreign ports; and if there has been any neglect, it must be imputed only to the neutral state and its officers who are answerable to its subjects for the consequences of such neglect (*r*). The effect of a notification to any foreign government is to include all the individuals of that nation; and a neutral master is not permitted to aver ignorance of a blockade, which has been notified to his government (*s*). A government having received notification is presumed to have communicated it to its subjects in foreign

(*p*) *The Hoffnung*, 6 Rob. 112. *The Triheton*, 6 Rob. 65.

(*q*) *The Neptunus*, 1 Rob. 170.

(*r*) *The Spes and Irene*, 5 Rob. 79.

(*s*) *The Neptunus*, 2 Rob. 110.

ports, when a reasonable time has elapsed for the purpose of making the communication (*t*).

Actual notice is proved by direct or circumstantial evidence shewing the knowledge of the party to be affected with it. Thus, although the American treaty requires warning to vessels sailing to a port without knowing it to be blockaded, it was held, that where the master, consignees and persons entrusted with the management of the vessel appeared to have been informed of the blockade, they were not in the situation which the treaty supposes (*u*). So where notice was sent to the governor of the place invested, and he informed all the foreign shipmasters, and amongst them the master of the vessel proceeded against (*v*). So where the fact was shewn to be known to the master warning was held to be unnecessary (*w*). A warning on the spot is sufficient, though ambiguous, if it appears that the master understood it. Thus, where a vessel destined to Amsterdam was stopped as she approached the Texel, and the master being warned, that he must not go into the Texel, inquired whether he might go to other Dutch ports; it was held, that the notice was sufficient, where the vessel was seized in attempting to reach Amsterdam by the passage of the Zuyder Zee, which was also blockaded (*x*). The notoriety of the fact, from time or other circumstances, that must be taken to have brought the existence of the blockade to the knowledge of the parties, is sufficient proof of notice (*y*). Thus, no notice is necessary to a vessel coming out of a blockaded port after the blockade

(*t*) *The Welvaart Van Pillaw*, 2 Rob. 128. *The Calypso*, 2 Rob. 298. *The Adelaide*, 3 Rob. 285. *The Hartige Hane*, 3 Rob. 329. *The Jonge Petronella*, 2 Rob. 131.

(*u*) *The Columbia*, 1 Rob. 156.

(*v*) *The Rolla*, 6 Rob. 370.

(*w*) *The Jutela*, 6 Rob. 177.

(*x*) *The Mercurius*, 1 Rob. 83.

(*y*) *The Hoffnung*, 6 Rob. 117.

has existed *de facto* for any length of time. The continued fact is itself sufficient notice. It is impossible for those within to be ignorant of the fact of the forcible suppression of their commerce. The notoriety of the thing supersedes the necessity of particular notice to each ship (*y*). So when notification of the blockade of the Texel was made to the Prussian government on the 11th of June, it was held, that it must have been known at Embden by the latter end of the month, and that such notoriety was sufficient to affect the owner at Embden with knowledge of the fact (*z*). A notice extending to ports not blockaded is bad altogether; because it takes from the neutral all power of election as to what port he will go to when he finds the port of his destination blockaded. Thus a warning not to go to any Dutch port, when there was no blockade extending to all the Dutch ports, was held bad for Amsterdam which was blockaded (*a*).

It is not necessary that the captor should assign any reason at the time of the capture. It may be a matter of convenience, that some declaration should be made; because it is possible that if the grounds are stated, it may be in the power of the neutral to give such reasons as may explain away the suspicion which is suggested; but it is not incumbent on the captor to state his reasons. He takes, at his own peril and on his own responsibility, its costs and damages for any wrongful exercise of these rights of capture (*b*).

Thirdly. Of the facts which constitute a breach of blockade.

When a blockade is known to exist, any act done with intent to enter the blockaded port is a breach of blockade (*c*).

(*y*) *The Vrouw Judith*, 1 Rob. 152. *The Adelaide*, 2 Rob. 113, n.

(*z*) *The Neptunus*, 1 Rob. 172. *The Adelaide*, 2 Rob. 112.

(*a*) *The Henrick and Maria*, 1 Rob. 148.

(*b*) *The Jouffrow Maria Schroeder*, 3 Rob. 153.

(*c*) *The Columbia*, 1 Rob. 154. *The Gute Erwartung*, 6 Rob. 184.
The Adonis, 5 Rob. 256.

The act of the master binds the owner with respect to the conduct of the ship, as much as if it were committed by the owner himself. The act of the master is as to penal consequences to be considered as the act of the owner (*d*), and will affect him to the extent of the whole of his property involved in the transaction. The act of going towards a blockaded port must be taken to be completed by the attempt (*e*). Where a master enters or approaches a blockaded port, such entry or approach is *prima facie* evidence of an intention to violate the blockade. It is no excuse that the master considered himself bound by his charter party to sail to the blockaded port (*f*). The intoxication of the master is no excuse (*g*). Where the master having been warned off the Texel, entered the Zuyder Zee, which was blockaded, with intent to go to the blockaded port of Amsterdam, that was held to be a breach of the blockade (*h*). So where a ship sailed with an intention of evading a blockade, it was held that such sailing is beginning to execute that intention, and is an overt act constituting the offence. From that moment the blockade is fraudulently evaded (*i*). Sailing in ballast to a blockaded port is a breach of blockade. In the case of egress the rule is different, but in the case of ingress nothing short of physical necessity is an adequate excuse (*k*). Want of provisions is an excuse, which will not on light grounds be received; because an excuse, to be admissible, must shew an imperative and overruling compulsion to enter the port under blockade, which can scarcely be said in any instance

(*d*) *The Vrouw Judith*, 1 Rob. 80.

(*e*) *The Columbia*, 1 Rob. 154. 1 Kent Com. 1st ed. 139, 140.

(*f*) *The Tutela*, 6 Rob. 181.

(*g*) *The Shepherdess*, 5 Rob. 226.

(*h*) *The Mercurius*, 1 Rob. 80.

(*i*) *The Columbia*, 1 Rob. 154. 1 Kent Com. 1st ed. 139, 140.

(*k*) *The Comet*, Edw. 32.

of mere want of provisions. It may induce a master to seek a neighbouring port, but it can hardly ever force a person to resort exclusively to the blockaded port (*l*). Where a master being warned off a blockaded port declared his intention of going to it, and was afterwards found near the same place with his ship's head towards the blockaded port, he was held guilty of a breach of blockade. A master is bound, on the first notice, to take himself out of an equivocal situation; and if he obstinately refuses or neglects to do so, such conduct will amount to a breach of blockade (*m*). So it is no excuse, that a ship went into a blockaded port to get a pilot to carry her to a lawful port (*n*). It has been repeatedly determined, that a ship is not at liberty to go up to a blockaded port even to make inquiry. That in itself is a consummation of the offence, and amounts to an actual breach of blockade (*o*). If a ship comes into roads, which are so connected with a particular port as almost to form part of it, there is reason to conclude that she comes there with a view to some communication with that particular port. And where a ship was lying within a sand and within the protection of the batteries in a place, where ships of large burden are usually unlivered by lighters, it was held that she must be considered to be within the port (*p*). Where a ship was not in the port but near it, the court strongly inclined to hold that a neutral ship has no right to anchor in such a spot, where she may have the opportunity of slipping into the blockaded port without molestation; and that she must be taken to be there with intent to break the blockade. It was

(*l*) *The Fortuna*, 5 Rob. 27. *Hartige Hane*, 2 Rob. 124. *The Neutralitet*, 6 Rob. 32.

(*m*) *The Apollo*, 5 Rob. 287.

(*n*) *The Elizabeth*, Edw. 198.

(*o*) *The Arthur*, Edw. 202. Per Cur. *The James Cook*, Edw. 263. *The Posten*, 1 Rob. 335, n.

(*p*) *The Neutralitet*, 6 Rob. 34.

unnecessary, however, in this case to lay down the rule, because the Trinity masters found that it was not a prudent or natural course for the master to have resorted to such a port as Ostend for the mere purpose of obtaining a pilot to Flushing; and the court therefore inferred, that the ship had been brought into that situation with a fraudulent purpose (*g*). So where the master for the professed purpose of taking a pilot stood in within a mile of the shore after he had seen the pilot boat coming out to him; the court held, that whatever the equivocal cause of such a situation may be, a person cannot be allowed to approach so near to a blockaded port as to place himself almost within protection of the shore, and that to allow such an approach with no necessity existing, would render a blockade perfectly nugatory (*r*). So where a master was steering a course, which would have carried him directly to the blockaded port, with the professed intention of running close under the land to obtain a pilot to take him to a lawful port; that was held to be a fraudulent violation of the blockade (*s*). So, where a master after having spoken an English frigate, from which he might have made inquiry, was found steering directly into the bay of the blockaded port with the professed purpose of ascertaining the land (*t*). So vessels are not allowed to call for orders at blockaded ports; for if that were permitted, they would not be prevented from delivering their cargoes there (*u*). So where the owners instructed the master, that the blockade would probably be at an end before he arrived, and directed him to proceed to the mouth of the port. A neutral merchant is not to send his ships to the very mouth of the port and

(*g*) *The Neutralitet*, 6 Rob. 34.

(*r*) *The Charlotte Christina*, 6 Rob. 101.

(*s*) *The Gute Erwartung*, 6 Rob. 182.

(*t*) *The Adonis*, 5 Rob. 256.

(*u*) *The Courier*, Edw. 249.

say, if you do not meet with the blockading force, enter; if you do ask a warning and proceed elsewhere, the rule is, that after knowledge of an existing blockade, you are not to go to the very station of the blockade under pretence of inquiry (*v*). For the same reason, a ship is not to go up to the blockading squadron to obtain information of the blockade (*w*), nor to inquire for a pilot. Such excuses could not be permitted without a total abandonment of belligerent rights. Such liberty of inquiry would amount in practice to an universal licence to attempt to enter, and on being prevented, to claim the right of going elsewhere (*x*).

The subjects of America are bound equally with those of other countries to all the general rules of observance of a blockade duly imposed. But looking to the great distance at which they are placed, the court has held, even where the blockade of a port in Europe has been notified in America, that merchants of that country might clear out conditionally for the blockaded port on the supposition that, before the arrival of the vessel a relaxation may have taken place. It was held, that ships sailing from America before the knowledge of the blockade reached America should be entitled to a notice, even at the blockaded port; and that ships sailing afterwards might sail on a contingent destination even to that port, to be ascertained and rendered definite by information to be called for at some British port. But these are not permitted to resort to the ports of the blockaded country for this information, since every one must perceive, that such a liberty would place it in the power of the enemy to determine the continuance of the blockade. In no case has it been held, that they might sail to the mouth of the blockaded ports to make inquiry (*y*). Where a ship's papers hold out

(*v*) *The Spes and Irene*, 5 Rob. 76.

(*w*) *The Posten*, 1 Rob. 335, n.; compared with *The Betsey*, *ibid*.

(*x*) *The Arthur*, Edw. 206.

(*y*) *The Shepherdess*, 5 Rob. 152. *The Spes and Irene*, 5 Rob. 76.

a destination, which is inconsistent with her course, the legal conclusion is, that her destination is fraudulent (*z*).

A ship is justified by unavoidable necessity in going into a blockaded port. Thus where a ship came out of a blockaded port with the same cargo she had gone in with in distress, and the Trinity masters found that the deviation was necessary and that the state of the wind and other circumstances made other ports objectionable ; that was held a sufficient justification (*a*). So where a ship was driven into a blockaded port by a strong westerly wind, that had been blowing continually for nine days (*b*), a licence to go to the blockaded ports of the Vlie was held to include Amsterdam, which is one of those ports. And when a licence is granted to go to a blockaded port by one passage, it is not substantially violated by going through another passage unless some special prohibition or some special inconvenience is shewn, which the party was bound to take notice of (*c*). Where a master sailed for a blockaded port and meeting a British fleet was informed that the port was not blockaded : although he would have been taken in the commission of the offence if he had been captured before he met the fleet, the court refused to look retrospectively to the state he was in before he met it ; and held, that erroneous information afforded a reasonable ground of belief that the blockade was raised, as it could not be supposed that such a fleet was ignorant of the fact (*d*). But misinformation in matter of law is no excuse (*e*). Misinformation derived from a foreign minister is no excuse. If such information prove false neutrals must look for redress to their own government or to those employed under it, who gave such erroneous intelligence (*f*).

(*z*) *The Mentor*, Edw. 207.

(*a*) *The Charlotta*, Edw. 252.

(*b*) *The Fortuna*, 5 Rob. 297.

(*c*) *The Juno*, 2 Rob. 116.

(*d*) *The Neptunus*, 2 Rob. 110.

(*e*) *The Courier*, Edw. 249.

(*f*) *The Spes and Irene*, 5 Rob. 79.

The act of egress is as culpable as the act of ingress; and a blockade is just as much violated by a ship passing outwards as inwards. A blockade is intended to suspend the entire commerce of the place, and a neutral is no more at liberty to assist the traffic of exportation than of importation. The utmost that can be allowed to a neutral vessel is, that having already taken in a cargo before the blockade begins, she may be at liberty to retire with it. If she afterwards takes on board a cargo, it is a fraudulent act and a violation of the blockade (*g*). It is lawful for a ship to withdraw from a blockaded port in ballast, or with a cargo shipped *bond fide* before notice of the blockade (*h*). The same rule applies with equal justice to goods sent in before the blockade and withdrawn *bond fide* by the neutral proprietor (*i*). But where a ship came out of a blockaded port in ballast, and was afterwards taken with a cargo on board, which had been sent out of the same port in lighters under charter-party with the ship: the ship and cargo were condemned (*k*). When a master voluntarily entered a blockaded port, and was there compelled to sell his cargo, and took another cargo on board; it was held that the entry and taking a cargo on board were both violations of the blockade (*l*). In a blockaded port a traffic cannot be allowed in ships more than in goods; and consequently when the ship of an enemy is so purchased by a neutral, the transfer is illegal (*m*). Where a ship that had been the property of the enemy at the commencement of the war, was taken coming

(*g*) *The Vrouw Judith*, Rob. 150. *The Frederick*, 1 Rob. 86. *The Mercurius*, 1 Rob. 170.

(*h*) *The Juno*, 2 Rob. 119. *The Nossa Senhora*, 5 Rob. 52. *The Vrouw Judith*, 1 Rob. 152. *The Potsdam*, 4 Rob. 89.

(*i*) *The Juffrow Maria Schroeder*, 4 Rob. 89 (n).

(*k*) *The Charlotte Sophia*, 6 Rob. 214 (n). *The Maria*, 6 Rob. 201. *The Lisette*, 6 Rob. 394.

(*l*) *The Byfield*, Edw. 188.

(*m*) *The Speculation*, Edw. 346.

out of a blockaded port, and satisfactory proof could not be given that she had been transferred before the commencement of the blockade, she was condemned (*n*). If an enemy's ship is purchased in a blockaded port, that alone is the illegal act, and it is immaterial out of what funds the purchase was effected (*o*). But the purchase of a neutral ship in a blockaded port by a neutral is lawful, and stands clear of all objection on the ground of blockade (*p*).

A licence expressed in general terms to sail from any port with a cargo will not authorize a ship to sail from a blockaded port with a cargo taken in there; the blockaded port must be specially designated, otherwise it shall be taken to be excepted from the general description in the licence (*q*). A licence to import a cargo from a port, granted on the same day on which the notification stated its blockade to commence, was held to be a protection (*r*). A licence to enter a blockaded port necessarily implies a licence to come out again; and when a return cargo was innocently taken on board, it was held to be protected, no proviso having been inserted that the party licenced should not bring a cargo away (*s*). The propriety of this decision, in which it was also held that a party licenced to go to a blockaded port by one passage may go to it through another passage not designated, is questionable. The nature of licences seems to require, that the privileges which they confer should be limited by the meaning distinctly expressed or necessarily implied in their terms, and should be subject to the conditions therein expressed.

Fourthly. Of the period during which a vessel continues to be liable to capture for breach of blockade.

(*n*) *The Vigilantia*, 6 Rob. 122.

(*o*) *The Vigilantia*, 1 Rob. 62.

(*p*) *The Potsdam*, 4 Rob. 89.

(*q*) *The Byfield*, Edw. 190.

(*r*) *The Hoffnung*, 2 Rob. 163.

(*s*) *The Juno*, 2 Rob. 116.

The penalty attaches till the voyage is complete. A ship that has violated a blockade is liable to be seized on its return voyage. There can be no natural termination of the offence but the end of the voyage. It would be ridiculous to say, if you can get past the blockading force you are free. There is no other point at which the offence can be terminated but the end of the voyage. If a ship that has broken a blockade is taken in any part of that voyage she is taken in the commission of the offence and subject to confiscation (*t*). Where a vessel was driven into a port by stress of weather, it was held that the voyage was not terminated: and that the penalty continued to attach (*u*).

The continuance of the penalty is subject to the continuance of the blockade. The penalty does not attach where the blockade is raised before capture. The same reason for rigour does not exist, because the blockade being gone the necessity for applying the penalty to prevent future transgression does not continue (*v*). So, where there is a guilty intention, but no possibility of committing the offence; as where a ship was destined for a blockaded port, but before she sailed the blockade was raised (*w*). So, the law allows a place for repentance, where a ship sails with a destination for a blockaded port: if the intention has been abandoned, and the ship is taken while proceeding to an open port (*x*).

(*t*) *The Frederick*, 1 Rob. 86. *The Welvaart*, 2 Rob. 128. *The Adelaide*, 2 Rob. 111 (n). *The General Hamilton*, 6 Rob. 61. Bynk. Q. J. P. 1. xii. p. 214. *The Christiansberg*, 6 Rob. 382. *Parkman v. Allan*, 1 Stair's Decis. 529.

(*u*) *The General Hamilton*, 6 Rob. 61. Bynk. Q. J. P. 1, xii. p. 214.

(*v*) *The Lisette*, 6 Rob. 687.

(*w*) *The Conferenzrath*, 6 Rob. 362.

(*x*) *The Neptunus*, 2 Rob. 110. Per Cur. *The James Cook*, Edw. 263.

CHAPTER V.

OF CONTRABAND.

ALL articles of commerce may be divided into three classes; first, those which have no military use and are merely matters of luxury; secondly, those which are of promiscuous use being adapted either to military or to civil purposes; thirdly, those which are peculiarly adapted to purposes of war.

The first are innocent whatever may be their destination: thus cheeses not fit for naval use are not confiscable though sent to a port of military equipment (a). So of torse, an inferior kind of hemp, unfit for naval purposes; but the captor's expences were allowed, because torse is so like hemp that if it were allowed to pass without examination the enemy would be supplied with hemp (b). The second are innocent or contraband, according to the predominant character of the enemy's port, which is the port of the vessel's destination: the third are contraband when the vessel in which they are carried, is destined to any port of the enemy whatever the character of that port may be (c). It is unnecessary for the purpose of this work to consider the modern distinction as to the right of preemption: as that distinction does not affect the right of capturing vessels and sending them in for adjudication.

(a) *The Jonge Margaretha*, 1 Rob. 195.

(b) *The Gesellschaft*, 4 Rob. 94. *The Evert*, 4 Rob. 354.

(c) Grot. iii. 1. v. Bynk. Q. J. P. 1. x.

Goods going to a neutral port cannot come under the description of contraband, inasmuch as all goods with a neutral destination are equally lawful (*d*). So it was held, that a cargo could not come under the description of contraband, which was dispatched in *bonâ fide* ignorance of war (*e*). A person is not at liberty to carry to a hostile port a cargo containing amongst other things contraband articles with the intention of selling innocent commodities only, and of proceeding with the contraband articles to a neutral port (*f*). The transfer of contraband articles from one part of the enemy's country to another, where they are required for the purposes of war, is subject to be treated in the same manner as an original importation into the country itself (*g*).

Gunpowder, arms, and military equipments and other things peculiarly adapted to military purposes, have been always contraband (*h*). Thus sail cloth is universally contraband even on a destination to ports of mere mercantile equipment (*i*). So of masts (*k*), anchors (*l*), pitch and tar (*m*), and hemp (*n*). But pitch and tar *bonâ fide* intended for the ship's use as stores are not contraband. The *bona fides* is a question of evidence whether the quantity found on board could really be intended for the ship's use. Persons are not, under pretence of a voyage round the world, to carry as much as they please of articles of this noxious nature, and then sell

(*d*) *The Imina*, 3 Rob. 167. Valin. v. 6. ix.

(*e*) *Jurgan v. Logan*, 1 Stair. Decis. 477.

(*f*) *The Trende Sostre*, 6 Rob. 390, n.

(*g*) *The Edward*, 4 Rob. 68.

(*h*) Bynk. Q. J. P. 1. x.

(*i*) *The Neptuneus*, 3 Rob. 108.

(*k*) *Staad Embden*, 1 Rob. 29. *The Charlotte*, 5 Rob. 305.

(*l*) Per Cur. *The Jonge Margaretha*, 1 Rob. 189.

(*m*) *The Jonge Tobias*, 1 Rob. 329. *The Neutralitet*, 3 Rob. 295. *The Twee Juffroyen*, 4 Rob. 242. *The Sarah Christina*, 1 Rob. 237.

(*n*) *The Evert*, 4 Rob. 354. *The Apollo*, 4 Rob. 158. *The Richmond*, 5 Rob. 325. *The Ringendie Jacob*, 1 Rob. 91.

them at different ports, where they may immediately become convertible to purposes of war. The term stores is to be liberally interpreted, but still it must be so understood as to be capable of something like a definitive construction (*o*). A ship peculiarly adapted to purposes of war is contraband as an article of commerce if intended to be sold for hostile purposes. It cannot, under any point of view but be considered as a very hostile act to be carrying a supply of a very powerful instrument of mischief, of contraband ready made up, to the enemy for hostile use (*p*). Thus, where a vessel in every respect fitted for a ship of war, was sent on her first voyage to a belligerent port, with instructions to the master to sell her, or take goods on freight, but that the owners would prefer selling to freighting, as she was not adapted to purposes of freight, the ship was condemned (*q*). But where ships of ambiguous use, and previously employed for purposes of trade, were going to be sold under circumstances not indicating a hostile purpose, they were restored (*r*).

In respect to matters of ambiguous use, the catalogue of contraband has varied much, and sometimes in such a manner as to make it very difficult to assign the reasons of the variations, owing to particular circumstances the history of which has not accompanied the history of the decisions. In 1673 corn, wine, and oil were deemed contraband. In much later times many other sorts of provisions have been condemned as contraband. In 1747 butter going to Rochelle was condemned; cheese was restored. The distinction appears nice; in all probability the cheeses were not of that species which is intended for ship's use. In the same year

(*o*) *The Richmond*, 5 Rob. 334.

(*p*) *The Richmond*, 5 Rob. 325.

(*q*) *The Brutus*, 5 Rob. Appendix, 1.

(*r*) *The Fanny*, *ibid*.

salted cod and salmon going to Rochelle were condemned. In 1748 rice and salted herrings were condemned as contraband. The modern established rule is, that generally they are not contraband, but may become so under circumstances arising out of the peculiar situation of the war, or the condition of the parties engaged in it. Articles are more favourably considered which are in their native and unmanufactured state. Thus, iron is treated with indulgence, though anchors and other instruments fabricated out of it are directly contraband. But the most important distinction is, whether the articles were intended for civil or for military uses, and this is determined by the nature and quality of the port to which they are going. If the port is a general commercial port, it shall be understood that the articles are going for civil use, although occasionally a frigate or other ships of war may be constructed in that port. On the contrary, if the great predominant character of the port be a port of military equipment, it shall be intended that the articles were going for military use, although merchant ships resort to the same place, and although it is possible that the articles might have been applied to civil consumption (*s*). Dutch cheeses, sent by a neutral merchant from Amsterdam to Brest, being cheeses fit for naval use, and such as are exclusively used in French ships of war, were condemned (*t*). So when cheeses fit for naval use were sent to Corunna, they were deemed contraband, because Corunna, if not in its prominent character a port of naval equipment, is situate in the same bay with Ferrol, and if the supply were permitted to be imported into the bay, it would be impossible to prevent its going on immediately and in the same conveyance to Ferrol (*u*). But such cheeses destined to Quimper were

(*s*) *The Jonge Margaretha*, 1 Rob. 189.

(*t*) *Ibid*.

(*u*) *The Zelden Rust*, 6 Rob. 93.

held not to be contraband, that port, though in the vicinity of Brest, being situated on the opposite side of a projecting headland or promontory, so as not to admit of an immediate communication except by land carriage (*v*). So such cheeses sent to Bordeaux, not being a port of military equipment in its principal occupation, although smaller vessels of war may be occasionally built or fitted out there, were held not to be contraband (*w*). So rosin going to a port not of military equipment was held not contraband (*x*). So of tallow going to Amsterdam, a great mercantile port as well as a port of military equipment (*y*). A cargo of ship's biscuits on a voyage to Cadiz, a port of military equipment, were condemned (*z*). So wines, though not generally contraband, were held to be naval stores when taken on a voyage to Brest, where there was a large armament lying very much in want of articles of this kind—articles of an indispensable nature (*a*). A cargo of ship timber going to an enemy's port of naval equipment is contraband (*b*). The same rule clearly applies to coals, coke, steam-engines, marine machinery, and their component parts, being applicable to the use of steam-vessels, whether ships of war or commerce. They are contraband if the ship in which they are carried is destined to a port of the enemy which in its predominant character is a port of naval equipment, but not contraband where the predominant character of the port is commercial.

It is a settled rule that the carriage of contraband with a false destination will work the condemnation of the ship

(*v*) *The Frau Margaretha*, 6 Rob. 92.

(*w*) *The Welvaart*, 1 Rob. 95, n.

(*x*) *The Nostra Signora*, 5 Rob. 97.

(*y*) *The Neptunus*, 3 Rob. 108.

(*z*) *The Ranger*, 6 Rob. 125.

(*a*) *The Edward*, 4 Rob. 68.

(*b*) *The Endraught*, 1 Rob. 25.

as well as the cargo. If papers, falsely holding out a neutral destination, are put on board, the enemy is securely and commodiously provided with the instruments of war. The cruiser can only satisfy himself of the destination; he cannot detain without a responsibility in damages. The false representation, therefore, is not useless for the purposes of mischief, even when the goods would only be liable to the right of preemption: it is the passport and convoy for noxious articles to the ports of the enemy (*c*). Thus, where a Prussian ship was captured with a cargo of hemp and iron destined ostensibly to Lisbon, but really to Bilboa, the ship and cargo were condemned (*d*). So where a neutral vessel was captured with a cargo of wines destined ostensibly to Lisbon, but really to Brest (*e*). The penalty does not generally attach, unless the articles are taken in the actual prosecution of a voyage to an enemy's port; you cannot generally take the proceeds on the return voyage; but the penalty attaches to goods on the return voyage, where they are the proceeds of contraband carried outwards with false papers, on the principle that the party shall not be allowed to take advantage of his own wrong. In that class of cases it is held, that the right of capture having been defrauded in the original voyage, the opportunity shall be extended to the return voyage (*f*). From the moment of quitting port on a hostile destination the offence is complete, and it is not necessary to wait till the goods are actually endeavouring to enter the enemy's port. But where, before capture, the destination has been changed from a hostile to a neutral port, or the port, by surrender, has ceased to be hostile, the property ceases to be liable to confiscation. The same rule applies in cases of contraband

(*c*) *The Sarah Christina*, 1 Rob. 237.

(*d*) *The Franklin*, 3 Rob. 217. *The Floreat Commmercium*, 3 Rob. 178.

(*e*) *The Edward*, 4 Rob. 68.

(*f*) *Per Cur. The Tendre Sostre*, 6 Rob. 390, n.

and on the same principle that is applied in cases of blockade (*g*).

The subject of enemy's despatches, which is sometimes considered under the head of contraband, has been already considered in a former chapter, as impressing a hostile character on neutral or friendly ships. British vessels, though not bound to an enemy's port, are liable to capture and confiscation, if, without permission from the Lords of the Treasury, granted on or before the 11th April, 1854, or licence from the council board after that date, they are found exporting or carrying coastwise arms, ammunition, or military or naval stores, or marine engines, boilers, or machinery, or their component parts, or any article applicable to the manufacture of marine machinery (*h*).

The law of contraband has, in many cases, been ascertained or varied by treaty.

By the treaty between Great Britain and Denmark 1670 (*i*), extended and explained by the convention of 1780, between the same parties, the enumeration of articles of contraband is precisely the same as in the American treaty, which seems to have been copied from it; except that the latter treaty substitutes the definite term ship-timber, for the indefinite expression *bois de construction*.

But it is expressly declared, that the denomination of contraband does not comprise fish and meat, fresh and salt, wheat, flour, corn, and other grain and pulse, oil and wine, and generally whatever serves for nourishment and sustenance of life; all which things, therefore, may lawfully be sold and imported even into places held by an enemy of the two crowns, provided they are not besieged or blockaded.

(*g*) *The Imina*, 3 Rob. 167. *The Trende Sostre*, 6 Rob. 390, n.

(*h*) Orders in Council, 18th Feb. and 11th April, 1854, and the act therein recited.

(*i*) 1 Chalmers, 78-97.

Fir planks being expressly excepted in the treaty may be carried anywhere, except to blockaded ports. With respect to other timber, the terms of the treaty, *bois de construction*, must be understood naval construction and must be confined to purposes of naval equipment. It was only meant to prohibit the carrying of such timber as is fairly to be deemed ship timber. Timber has frequently from particular circumstances a definite and determinate character ; it may be denoted by a particular form as knee-timber, which is crooked timber peculiarly useful for the building of ships; or it may be distinguished by its dimensions. But as to other timber generally, which is as much a thing of ambiguous use as any thing can be, the fair criterion will be the nature of the port to which it is going. If it is going to Brest the destination may reasonably be held to controul and appropriate the dubious quality and fix upon it the character of ship timber ; if to other ports of a less military nature, though timber of the same species, it may be more favourably regarded. It is every day's practice not to consider as included within the prohibition all that a more extended interpretation might justify : it restores spars and barks of ordinary magnitude, unless there is something special in the circumstances attending them to shew that they have a positive destination to naval purposes. In timber of an indeterminate nature the judicial test is to be sought from the destination on which it is going (*k*). So oak timber and iron in bars, though fir planks and unwrought iron only are excepted in treaty, are not contraband unless fitted for the purposes of naval construction (*l*).

As to Swedish or Danish goods on board Swedish or Danish vessels respectively with regard to contraband, the third article of the maritime convention between Great Britain and

(*k*) *The Twee Gebroeder*, 4 Rob. 33.

(*l*) *The Ringende Jacob*, 1 Rob. 92.

Russia of 1801 to which Sweden and Denmark acceded in 1802(*m*) declares : that their Majesties having resolved to place under a sufficient safeguard the liberty of commerce and navigation of their subjects in case one should be at war while the other is neutral, have agreed : first, that the vessels of the neutral power may freely navigate to the ports and coasts of the belligerent countries. Secondly, that effects on board the neutral vessels shall be free with the exception of contraband—and it is agreed not to comprise in the enumeration of contraband articles the raw or manufactured produce of the countries. Thirdly, that to avoid all ambiguity and all misunderstanding as to what ought to be deemed contraband of war their Majesties declare that they will not recognise as such any but the following articles, that is to say, cannons, mortars, muskets, pistols, bombs, grenades, bullets, balls, fusees, flint-stones, matches, powder, saltpetre, sulphur, breast-plates, pikes, swords, belts, cartouch bags, saddles and bridles, beyond the quantity that may be necessary for the vessel and of those who are serving on board ; and all other articles not enumerated shall not be deemed naval or military stores nor subject to confiscation and consequently shall pass free.

The seventh article provides that to prevent a fraudulent use of the flag, it is agreed to establish the inviolable rule, that to entitle any vessel to be considered as the property of the country of which it bears the flag, it must have on board a captain and one half the crew subjects of that country, and its papers and passports in good and due form.

This treaty confers no privilege upon goods of the subjects of the contracting parties conveyed in foreign vessels(*n*), nor is it applicable to the goods of any but the subjects of the contracting parties. In both those cases therefore, the common law rules of contraband operate and not the provisions of the treaty.

(*m*) Martens Trait. ix. 476. 486.

(*n*) Per Cur. *The Apollo*, 4 Rob. 161. *The Charlotte*, 5 Rob. 305.

The treaty of 1661 between Great Britain and Sweden, Article XI. (*m*), provides, that it is by no means to be understood that that confederate, who is not a party in war, shall be denied the liberty of trade and navigation with the enemies of that confederate who is involved in such war; provided only, that no goods called contraband, and especially money, no provisions, nor arms, nor bombs with their fusees and other appurtenances, no fire balls, gunpowder, matches, cannon balls, spears, swords, lances, pikes, halberts, guns, mortars, petards, grenades, musket rests, bandaliers, saltpetre, muskets, musket bullets, helmets, head pieces, coats of mail commonly called cuirasses, and the like kind of arms, nor troops, horses, nor any thing necessary for the equipment of cavalry, nor pistols, belts, nor any other instruments of war, nor ships of war and guard ships be carried to the enemies of the other confederate under the penalty, that if either of the confederates shall seize the same as a booty, the same shall be absolutely retained. Nor shall either of the confederates permit that the rebels or enemies of the other be assisted by the endeavours of any of his subjects; or that their ships be sold, lent, or in any manner made use of by the enemies or rebels of either to his disadvantage or detriment. But it shall be lawful for either of the confederates or his people or subjects to trade with the enemy of the other, and to carry to them any merchandize whatsoever (excepting what is above excepted) without any impediment, provided they are not carried to those ports or places, &c.

The treaty of 1661 is varied by the explanatory convention of 1803 (*n*). The first Article adds to the enumeration of contraband contained in the former treaty, after the words ships of war and guard ships, these words, or any other manufactured articles which may serve directly for their equipment.

(*m*) 1 Chalmers, 44.

(*n*) Martens, 10. 520.

Upon this article it was held that copper in sheets was not contraband, unless fit for the sheathing of vessels (*o*).

The second article (which is most important for the subject now treated of) provides, that the cruisers of the belligerent power shall exercise the right of detaining vessels of the neutral power going to ports of the enemy with cargoes of provisions, or of pitch, rosin, tar, hemp, and generally all articles not manufactured, which may serve for the equipment of vessels of whatever dimensions; and in like manner all manufactured articles that may directly serve for the equipment of merchant vessels (except as provided in article IV.); and if such cargoes so exported in vessels of the neutral power are the produce of its territory and taken on account of its subjects, the belligerent powers shall exercise the right of preemption, &c.

Article III. provides, that if the cargoes specified in the preceding article going with a declared destination to a neutral port, are detained on suspicion of a real destination to a port of the enemy, and if it shall be found, after due inquiry, that they are really destined to a neutral port, they shall receive indemnification, &c.

Article IV. provides, that herrings, iron in bars, steel, copper, brass and brass-wire, planks and barks, except those of oak, and spars, shall not be subject to confiscation, nor to the right of preemption on the part of the belligerent; but they shall be free on board neutral vessels, (that is, as it seems, vessels of the other contracting party being neutral).

Under this treaty it has been held, that oak timber is not contraband unless fitted for naval stores (*p*).

The treaty between Great Britain and Holland, 1661, Article III. (*q*), provides, that the term of contraband goods is

(*o*) *The Charlotte*, 5 Rob. 275.

(*p*) *The Ringende Jacob*, 1 Rob. 92.

(*q*) 1 Chalmers, 161. By Article xiv. of this treaty a Dutch ship is

understood to comprehend only all sorts of fire-arms and their appurtenances, as cannon, muskets, mortar-pieces, petards, bombs, grenades, fire-crancels, pitched hoops, carriages, rests, bandoliers, powder, matches, saltpetre, bullets, swords, pikes, morions, head-pieces, coats of mail, halberts, javelins, horses, great saddles, holsters, belts, and other utensils of war, called in French, *assortissemens servantes à l'usage de la guerre*.

Article IV. In this quality of contraband goods shall not be comprehended corn, wheat, and other grain and pulse, oil, wine, salt, or generally any thing that belongs to the nourishment and sustenance of life.

By the treaty of 1794, between Great Britain and the United States of America (*q*), Article XVIII., in order to regulate what shall in future be deemed contraband of war, it is agreed, that under the said denomination shall be comprised all arms and implements serving for the purposes of war by land or by sea; such as cannon, muskets, mortars, petards, bombs, grenades, carcasses, saucisses, carriages for cannon, musket-rests, bandoliers, gunpowder, matches, &c., and generally all other implements of war; and also timber for shipbuilding, tar or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir planks only excepted; and all the above articles are declared to be just objects of confiscation, whenever they are attempted to be carried to an enemy.

And whereas the difficulty of agreeing on the precise cases, in which alone provisions and other articles not generally contraband may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings

to be set at liberty, if the master shall be content to deliver all contraband goods to the captain of the belligerent ship. See above, Chap. 2.

(*q*) Martens, vi. 336.

that might hence arise, it is further agreed, that whenever any such articles so becoming contraband according to the existing law of nations shall for that reason be seized, the same shall not be confiscated, but the owners thereof shall be speedily and completely indemnified; and the captors, or in their default, the government, under whose authority they act, shall pay to the masters or owners of such vessels the full value of all articles with a reasonable mercantile profit thereon, together with the freight and also the demurrage incident to such detention.

With respect to provisions, and the mode of estimating indemnification in case of pre-emption, the treaty is in accordance with the practice of the English prize court. As to the enumeration of contraband articles, it is merely declaratory of the law of nations (*r*).

With regard to all treaties respecting contraband, it is to be observed, that they refer to cases where one party is in a state of neutrality, and not where both are connected in hostilities against one common enemy. They cannot, therefore, extend to the trade of either country, at a time when both countries are associated in war and are bound to contribute their whole force and energy against the common enemy. Such treaties are formed for the regulation of the trade of the contracting parties, when one of them is at peace and in a state of neutrality towards each of the belligerent powers. But when they are engaged in hostility against a common enemy the treaties are inapplicable (*s*). In that case questions of contraband are not to be determined by the provisions of treaties relating to a state of neutrality on the part of one of the contracting parties; but by the rules provided by the common law of nations. For this reason, it is unnecessary to set forth the provisions respecting the enumeration

(*r*) 1 Kent Com. 128.

of contraband contained in the treaty of 1786 of navigation and commerce between England and France, which are substantially the same as those of the Dutch treaty, above recited.


(s) *The Eleonora Wilhelmina*, 6 Rob. 331. *The Neptunus*, 6 Rob. 403.

CHAPTER VI.

OF LICENCES.

A LICENCE is a privilege granted to subjects, neutrals, or enemies, whereby their vessels and cargoes are exempted from the confiscation which would otherwise ensue from the act, which the licence permits.

It is well known that by war all communication between the subjects of the belligerent countries must be suspended, and that no intercourse can legally be carried on between the subjects of hostile states, but by the special licence of their respective governments. The sovereign authority of the state is alone competent to decide on all the considerations of commercial and political expediency, by which such an exemption from the ordinary consequences of war must be controlled. Licences then being high acts of sovereignty are necessarily of strict construction, and must not be carried farther than the intention of the authority which grants them may be supposed to extend: not that they are to be construed with pedantic accuracy, nor that any small deviation should be held to vitiate the fair effect of them. An excess in the quantity of goods permitted might not be considered noxious to any extent. A variation in the quality or substance of the goods might be more significant, because a liberty assumed of importing one species of goods under a licence granted to import another, might lead to dangerous abuses. The licence must be looked to for the enumeration of the goods that are to be protected by it.



Another circumstance in all licences is the limitation of time, in which they are to be carried into effect. For as it is within the view of government in granting these licences to combine all commercial and political considerations, a communication with the enemy might be very proper at one time and at another very unfit and highly mischievous. Time therefore appears to be a very important ingredient and a party is not to take upon himself to extend the term of a licence.

Two circumstances are required to give due effect to a licence; first, that the intention of the grantor should be pursued; and secondly, that there should be an entire *bona fides* on the part of the user. It is absolutely essential, that that only should be permitted which the grantor intended to permit; whatever he did not mean to permit is absolutely interdicted, and the party who uses the licence engages not only for fair intention but for an accurate interpretation and execution; not however exclusive of such a latitude as may be supposed to conform to the intentions of the grantor liberally understood (*t*). It is sufficient if they shew, that under the difficulties of commerce they come as near as they can to the terms of the licence. When there is no bad faith in the parties and no undue extension of the terms of the licence beyond the meaning of the grantor, any little informalities or trifling deviations shall not injure them (*u*). As a general rule it is to be understood, that where no fraud has been committed or meditated as far as it appears, and when the parties have been prevented from carrying the licence into literal execution by a power which they could not control, as by embargoes in foreign parts or by the fury of the elements, they shall be entitled to the benefit of its protection, though the terms have not been literally and strictly fulfilled (*v*). But strict performance is not excused

(*t*) *The Cosmopolite*, 4 Rob. 8.

(*u*) *The Vrouw Cornelia*, Edw. 349.

(*v*) *The Goede Hoop*, Edw. 327.

where there has been a want of good faith, or a departure from the terms of the licence beyond the necessity imposed by unavoidable obstacles (*w*).

Where the licence is irregular, or the parties are acting in apparent contravention of the literal terms of their licence, capture is justifiable, and the captors are entitled to their expenses though the contravention should not be such as will subject the vessel or cargo to confiscation. Thus, where the vessel, licensed to take on board a cargo in an enemy's port, did not sail from the port with her lading till her licence had expired, having been detained by an embargo, restitution was decreed on payment of the captor's expences (*x*). So where a vessel was exporting flour from an enemy's country by permission of the British consul, with the sanction of the British admiral, who could give no such permission except subject to ratification, and the permission was afterwards ratified by the government (*y*). But where a vessel, having arrived and delivered its cargo in this country after the expiration of the licence, was, upon that ground, captured on its return voyage, it was held, that if there had been any improper delay in the earlier part of the voyage, it was effectually purged by the arrival of the ship and the delivery of its cargo, and the vessel was restored and the captor's expences refused (*z*).

The rules for the construction of licences above laid down may be considered in respect of—first, the vessel; secondly, the cargoes; thirdly, the course of navigation to which the licence is applicable; and fourthly, the time for which it is operative.

First, of the vessel to which the licence is applicable.

(*w*) *The Dankbarkeit*, 1 Dod. 183.

(*x*) *The Goede Hoop*, Edw. 336.

(*y*) *The Hope*, 1 Dod. 226.

(*z*) *The Freundschaft*, 1 Dod. 316.

It is not considered an essential deviation from the terms of a licence if the ships of other countries than those designated in the licence be employed, provided the different countries have the same political bearing towards this kingdom. But where an enemy's ship was represented to be a neutral, and was navigated under the disguise of a neutral, and under a licence obtained by that misrepresentation, the ship and freight were condemned, and it was held that the cargo would be involved in the same condemnation if it could be shewn that the owner of the cargo was privy to the fraud (a). A licence for importation in a neutral vessel will not protect a British ship (b), nor an enemy's ship (c); but, in the absence of all fraud or collusion on the part of the owner of the cargo, it is sufficient if the vessel is visibly and to all appearance neutral (d). A vessel is not protected by a licence on board, where there is nothing to shew that it was intended by any of the parties to be applied to that vessel. Thus, where a vessel was captured in ballast, with a licence on board which did not appear in any manner to apply to the vessel, as it was not indorsed, and the name of the vessel did not appear in the body of it, it was held that the vessel was not protected. It might be going for the protection of another vessel, and it would be impossible to say that the mere circumstance of its being on board the vessel that conveys it shall be sufficient for her protection also. A licence must be in some specific manner applied to the vessel which it is intended to protect (e). A licence to export a cargo is sufficient for the protection of the ship returning with the same cargo, where the exportation has been defeated by the

(a) *The Dankbarkeit*, 1 Dod. 183.

(b) *The Jonge Arend*, 5 Rob. 14.

(c) *The Hoffnung*, 2 Rob. 162.

(d) *The Hoffnung*, 2 Rob. 162. *The Gute Hoffnung*, 1 Dod. 252.

(e) *The Speculation*, Edw. 344.

elements or the act of the enemy; but to entitle himself to protection, the claimant must shew that the cargo consists of the identical goods that were carried out, and that no others were taken on board in the enemy's port (*f*). So it was held, that a licence to import a cargo would extend to protect a vessel on her way to the port of lading in ballast, for the express purpose specified in the licence (*g*). Where a licence is granted to sail under any flag except that of a particular nation, a vessel of that nation is excluded from the benefit of the licence, though not sailing under the national flag (*h*); but such a licence, where the parties had acted fairly under it, was held to protect a vessel though the country to which it belonged had been unexpectedly annexed to the prohibited country before capture (*i*). Where a licence was granted to purchase an enemy's vessel in satisfaction of a debt, such purchase was held valid, though the purchaser's agent had, without authority, given a bond for restitution at the conclusion of the war (*k*). But a general licence will not protect a vessel going to be sold in an enemy's port, for a licence must be intended to be granted for some benefit to the trade of the country granting it (*l*).

Secondly, of the cargo to which the licence is applicable. A special licence will not enure to the protection of any thing beyond its specific purport. Hence a licence to British merchants by name, or their agents, or the bearers of their bills of lading, to import certain articles, will not protect such articles being the property of an enemy (*m*); nor will such licence protect the property of other British merchants whose

(*f*) *The Jonge Frederick*, Edw. 357.

(*g*) *The Cornelia*, Edw. 360.

(*h*) *The Bowrse*, Edw. 370.

(*i*) *The Jonge Clara*, Edw. 371.

(*k*) *The Clio*, 6 Rob. 67.

(*l*) *The Beurse Van Koningsberg*, 2 Rob. 169.

(*m*) *The Speculation*, Edw. 34.

accounts and risks are expressed in the bill of lading, not being the agents of the grantees of the licence, who never had any interest in the goods. The case would have been different if the claim had been made under bills of lading which the holders of the licence, after having conducted the importation from the enemy on their own account, had transferred to the claimants (*n*). But an inaccurate description will not vitiate the licence where the government are apprised of the intention of including persons so described. Where a person took a licence in the name of himself and Co., meaning to include persons who had agreed to take part in the shipment, and he had first stated the names and then taken the licence in this abbreviated form, they were held to be protected (*o*). A licence to a British merchant will not protect enemy's property, unless the words "to whomsoever the property may belong" are inserted therein (*p*). A licence to a British merchant to import will not protect the importation of goods exported by him as a merchant in the enemy's country (*q*).

But where a licence is general, it is immaterial who are the persons who act under it, provided they comply with its conditions. Hence it was held to be immaterial that such a licence, granted here in the usual manner, had afterwards been bought in the enemy's country (*r*). A licence to export enumerated articles to an enemy's port will not protect articles not enumerated, though shipped with an ulterior destination to a neutral port and without fraudulent intention (*s*). A licence to import specific goods will not protect

(*n*) *The Jonge Johannes*, 4 Rob. 263.

(*o*) *The Christina Sophia*, cited per Cur. 4 Rob. 267.

(*p*) *The Cousine Maryanne*, Edw. 346.

(*q*) *The Jonge Klassina*, 5 Rob. 297.

(*r*) *The Acteon*, 2 Dod. 52.

(*s*) *The Vriendschap*, 4 Rob. 96.

goods not specified (*t*). But where lace, made under an order given before hostilities, which the importer had no opportunity of countermanding, was shipped on board a vessel licenced to import raw materials it was restored, though not protected by the licence (*u*). This last decision seems to be contrary to all principle and the court expressly guarded against its being drawn into precedent. A licence to proceed to an enemy's port in ballast will not protect a vessel proceeding thither with a cargo (*v*). Hostile violence is no excuse for contravention of the terms of the licence in respect of cargo: though it is an excuse for contraventions in respect of time, because in the latter case there is no ground for suspecting collusion, since demurrage is a loss to the party licenced (*w*). When a vessel licenced to proceed to a port in ballast had half a cargo of timber on board described as ballast, but accompanied with a certificate of origin, the licence was held to be defeated (*x*). So where a vessel licenced to carry a cargo of corn had a quantity of fire arms concealed under her cargo (*y*). So where a vessel took in part of her cargo at a port to which the vessel was licenced to proceed for the mere purpose of obtaining a clearance to the port, to which she was licenced to export a cargo (*z*). When a licence is expressly for importation it must be taken to have been the understanding of the parties, that the licence was not to extend to re-exportation (*a*). Where a vessel licenced to import a specified cargo from Amsterdam and to export a return cargo from London, on condition that the cargo imported should be put into government warehouses

(*t*) *The Goede Hoop*, Edw. 336. *The Jonge Clara*, Edw. 374.

(*u*) *The Juffrow Catherina*, 5 Rob. 141.

(*v*) *The Catherina Maria*, Edw. 337.

(*w*) *The Seyerstadt*, 1 Dods. 241. *The Catherina Maria*, Edw. 337.

(*x*) *The Wohlforth*, Edw. 365.

(*y*) *The Nicoline*, Edw. 364.

(*z*) *The Henrietta*, 1 Dods. 168.

(*a*) *Per Cur. The Vrouw Deborah*, 1 Dods. 164.

as a security for the exportation of the return cargo, was obliged to put in to a neighbouring Dutch port and there sold her damaged cargo and took on board another identical in substance and quality; that was held to be a substantial compliance with the terms of the licence (*b*). A licence was granted to import a specified cargo from Charente in a vessel expressly named, or in any neutral vessel. The shipment could not be made at that port all foreign vessels there being under sequestration. Part of the cargo was sent by land from Bordeaux and there shipped in one vessel; and the sequestration being taken off a few days afterwards, the remainder was shipped from Charente with the licence and a certificate that the rest of the cargo had been shipped at Bordeaux. The quantity in the two ships was only equal to what might have come and was intended to come in one. The licence was held to protect the whole cargo and both vessels (*c*).

Thirdly, of the course of navigation, to which a licence is applicable.

A licence is vitiated by an unauthorized alteration changing the port of shipment (*d*). A licence to import a cargo into a particular port is confined to that port, or at least to one nearly allied or contiguous to it: and where a particular course is designated it must be observed. A ship licenced to go to Dublin north-about found going to Leith a port not named in the licence and to be reached by a different course was condemned (*e*). A licence authorizing a ship to sail from any port will not authorize her to sail from a blockaded port, unless specially designated (*f*). A vessel touching at a blockaded port for orders vitiates a licence for a direct voyage (*g*). But this

(*b*) *The Wohlforth*, 1 Dods. 305.

(*c*) *The Vrow Cornelia*, Edw. 349.

(*d*) *The Twee Gebroeders*, Edw. 95.

(*e*) *The Munly*, 1 Dods. 257.

(*f*) *The Byfield*, Edw. 190.

(*g*) *The Frau Magdalena*, Edw. 367.

rule does not apply when the fact of the port being blockaded was not known when the vessel sailed (*h*). Where a deviation was averred by the master to have occurred in consequence of damage received in a gale, which makes it necessary to put into an interdicted port; it was held that this averment could not be established by the unsupported testimony of the master and crew without proof of an original destination in conformity with the licence (*i*). Where a vessel licenced to Leith was proceeding thither with a contingent destination to an enemy's port, if a licence could be obtained; the licence was held not to be vitiated by such contingent destination (*k*). Where a licence was granted to proceed to any port of the United Kingdom, on condition that if the vessel should be destined to any port of this kingdom south of Hull, she should stop at Dundee or Leith for convoy; it was held that the context shewed the words this Kingdom to mean England, and that the condition applied only to vessels destined to English ports south of Hull (*l*). Where a licence provides, that a vessel shall touch at a certain port for convoy, that is a substantive condition, the violation of which can only be excused by insurmountable obstacles (*m*). But where a British admiral had directed a deviation for the purpose of taking convoy at another place, the court felt itself bound to uphold the act of the admiral, though it did not approve of his construction of the licence (*n*).

Fourthly. Of the time for which a licence operates. A licence cannot act retrospectively so as to take away an interest, which is vested in point of law in the captors. Where a vessel was captured on the 24th of January with an

(*h*) *The Emma*, Edw. 366.

(*i*) *The Europa*, Edw. 342.

(*k*) *The Henrietta*, Edw. 363.

(*l*) *The Hector*, Edw. 379.

(*m*) *The Europa*, Edw. 358. *The Minerva*, Edw. 375.

(*n*) *The Anna Maria*, 1 Dod. 209.

expired licence on board, and was claimed under another licence, bearing date the 20th of January; but it appeared from the claimant's affidavit, that application for a licence in one form was made on that day and refused, and some days after a licence was granted in another form, and the date was carried back to the 20th, the court held, that to give protection the existence of the licence at the time of capture must be shewn. Here the claimant had not averred that to be the case, and the style of his affidavit implied the contrary; and it was held that the licence was no protection (*o*). A licence is in its nature prospective, and cannot protect an act done before it was granted (*p*). A licence not on board the ship but endorsed for it by the shipper after capture is no protection (*q*). A licence is vitiated by an unauthorized alteration of its date (*r*). A licence will protect after its expiration where the delay has been occasioned by insurmountable obstacles without fraud or negligence on the part of the claimant (*s*) even though the government has refused to renew the licence (*t*). The indulgence extended to cases of expired licences embraces the difficulty of procuring ships and all other insurmountable impediments of whatever description; and the court will not call upon claimants to negative an imputation of having used the licence before, where there is nothing to raise a suspicion of such a fraud (*u*).

Licences terminate at the conclusion of peace, and will not protect a vessel upon the breaking out of fresh hostilities (*v*).

(*o*) *The Vrouw Deborah*, 1 Dod. 160.

(*p*) *The St. Ivan*, Edw. 376.

(*q*) *The Fortuna*, Edw. 236.

(*r*) *The Louisa Charlotte*, 1 Dod. 308.

(*s*) *The Goede Hoop*, Edw. 327. *The Johan Pieter*, Edw. 354.

(*t*) *The Æolus*, 1 Dod. 300.

(*u*) *The Sarah Maria*, Edw. 361. *The Carl*, Edw. 339.

(*v*) *The Planter's Wensch*, 5 Rob. 22.

CHAPTER VII.

OF RANSOM.

THE ransom of vessels being considered less beneficial to the state than their capture, and liable to great abuse, has been taken away by acts of Parliament; except in cases of necessity, to be allowed by the court of admiralty (*a*).

Ransoms are contracts entered into at sea, whereby a captain engages for the release and safe conduct of the captured vessel in consideration of a sum of money, which the master of the captured vessel engages on behalf of himself and the owners of the ship and cargo to pay; and for the payment of which he is generally required to deliver a hostage (*b*). The contract is drawn in two parts, of which the captor has one, which is called the ransom bill; the master of the ransomed vessel has the other, which operates as his safe-conduct (*c*). The port, to which the ransomed vessel is bound to return, must be expressly mentioned in the safe-conduct (*d*). The safe-conduct operates as a protection to the ransomed vessel from all ships of the country of the captor and its confederates during the time therein expressed. It is binding upon the ships of the country of the captor, as

(*a*) 22 Geo. 3, c. 25; 35 Geo. 3, c. 66, ss. 35, 36; 45 Geo. 3, c. 72, ss. 16, *et seq.* Prize Act, Russia, 1854.

(*b*) Pothier, Tr. de Prop. 1. 2. iv. § 127, and see 4 Rob. 402.

(*c*) Valin, Tr. xi. 2. iii. Pothier, *ibid.*, §§ 129. 130.

(*d*) Pothier, *ibid.* § 131.

given by the authority of its sovereign; and upon those of its allies, as an obligation necessarily implied in every confederacy (*e*). The master binds himself for the payment of the stipulated sums; and his contract on their behalf is binding upon the owners of the ship and cargo to the extent of their respective interests (*f*). In addition to the sum stipulated for ransom, they are also bound to pay for the maintenance of the hostage (*g*). If no hostage were taken the ransom bill would be equally valid. But according to the practice of nations hostages are taken as a security, because otherwise it would be difficult to enforce the payment of ransom during war (*h*). The hostage has a right of action for the purpose of compelling the performance of the contract, which is necessary to set him at liberty, against the master and against the owners of the ship and cargo, for they are bound by all contracts made by the master for their benefit and the claims of the hostage are a charge upon the ship and cargo (*i*). The master cannot bind the owners beyond the value of the ship and cargo, and they may always discharge their liability by abandonment, in which case the master is personally liable for the payment of the ransom and expenses of the hostage (*k*). In case of the insolvency of the master the captor is bound to release the hostage on payment of the sum, for which the ship and cargo are sold by public authority; although the sum specified in the ransom bill exceeds that amount. (*l*).

If the vessel ransomed perish by storms, the ransom is not

(*e*) Val. Tr. xi. 2. xvii. Pothier, *ibid.* § 135.

(*f*) Pothier, *ib.* § 136.

(*g*) Val. Tr. xi. 2. xiii.; 3. iv. Pothier, § 137.

(*h*) Val. Tr. xi. 3. 1.

(*i*) Pothier, *Ibid.* §§ 142. 143.

(*k*) Val. Tr. xi. 3. xii. *Kelly v. Grant*, cited in *Yates v. Hall*, 1 Term Rep. 76. 80.

(*l*) Val. Tr. xi. 1. xv.; xi. 3. xiii. xiv.

discharged thereby; for the captor only guarantees the vessel against all dangers from the cruisers of his own country or its allies, and not against the perils of the sea, unless a clause providing for that contingency be expressed in the contract. A clause provided, that the ransom should not be due if the vessel should founder at sea, would not extend to a case of wreck. If it were so extended, the master might wreck the vessel, so as to save the most valuable parts of the cargo, for the express purpose of discharging the ransom (*m*). Where a ransomed vessel is captured a second time out of the course or beyond the time prescribed by the safe-conduct, and condemned, the ransomed bill is discharged, and the stipulated amount is a charge upon the proceeds of the ship and cargo, of which only the surplus is payable to the second captor (*n*). Where the captor's vessel is captured with the ransom bill, the ransom bill is discharged; and having been so discharged it cannot be revived by recapture (*o*). So where the captor having transmitted the ransom bill is taken with the hostage on board, the ransom is discharged by capture (*p*). But in other cases the hostage is a mere collateral security, so that the ransom bill is not discharged by his escape or death (*q*). Where the captor's vessel is taken after the delivery of the hostage and ransom bill, the ransom remains due, notwithstanding the capture. In that case there is nothing on board that represents the ransomed vessel; and when the ransom bill and hostage have been conveyed to a place of safety, it is the same thing as if the vessel had been conveyed thither as a prize, in which case it would enure to the benefit of the captor, notwithstanding the subsequent capture of his own

(*m*) Val. Tr. xi. 2. xxvi. Pothier, *ibid.* § 139.

(*n*)

(*n*) Val. Tr. xi. 2. xix. Pothier, *Ibid.* § 139.

(*o*) Val. Tr. xi. 2. xiv.

(*p*) Val. Tr. xi. 2. xiv. xv.; xi. 3. xi.

(*q*) Val. *ibid.* *Ricord v. Bettenham*, 3 Burr. 1734.

vessel (*r*). So where the vessel of the captor was captured with the ransom bill concealed on board, which was never delivered up to the captors, nor ever possessed by them; it was determined on the authority of Grotius that under these circumstances there never had been any capture of the ransom bill, and that the ransom was still due. For no man can be said to have possession of that, of which he does not even know the existence (*s*). So where the captor's vessel is captured with the ransom bill and hostage on board, but the ransom bill contains a special clause, that in that case the ransom shall still be payable (*t*).

(*r*) Val. Tr. xi. 2. xvi.

(*s*) *Cornee v. Blackburne*, 2 Doug. 640. Grot. iii. 21. xxviii.

(*t*) *Anthon v. Fisher*, 2 Doug. 648, n.

CHAPTER VIII.

OF PRIZE.

For the purposes of the present work prize may be considered, first, with respect to the tribunals that have the adjudication thereof.

Secondly, with respect to the rights of captors.

First, as to the tribunals.

By the maritime law of nations universally and immemorially received, there is an established method of determination, whether the capture be or be not lawful prize. Before the ships and goods can be disposed of by the captor, there must be a regular judicial proceeding wherein both parties may be heard, and condemnation thereon as prize in a court of admiralty, judging by the law of nations and treaties. The proper and regular court for these proceedings is the court of that state to which the captor belongs.

But in the case of allied nations acting in confederacy against a common enemy, the question who is the captor in all cases of common action, must of necessity be determined by their conventions. In all cases of such confederacy the allied states have been considered as constituting for the purposes of war one state ; so that a captured vessel brought into the port of an ally, has been considered in all times as much within the jurisdiction of the confederate, and subject to the adjudication in his courts, as if it had been brought to the port of the confederate (*a*). With regard to neutral or friendly

(*a*) *The Henrick and Maria*, 6 Rob. 59.

claimants, it is immaterial what rule is laid down : for it must be assumed that the Admiralty Court of either confederate will administer indifferent and impartial justice to all claimants. The court, though locally situated in the country of the captor, is entirely independent of all municipal regulations, and bound to administer justice not according to local laws, but according to the law of nations and the provisions of treaties (*b*). The only concern that neutral and friendly claimants have in respect of the rule laid down by confederates, as to who shall be considered captor, is, that the rule should be clear and determinate ; so that they may know, under all circumstances, to the tribunals of what country they must resort.

The rules laid down by the convention between France and England are perfectly clear and free from all ambiguity. Where the vessel captured is a merchant vessel of one of the confederate states ; the jurisdiction belongs to the country of the captured vessel (*c*) : in all other cases the jurisdiction belongs, in the case of sole captures, to the country of the captor ; in the case of actual joint captures to the country, whose flag shall have been borne by the officer having the superior command in the action (*d*) ; in the case of constructive joint captures to the country of the actual captor (*e*). The instructions (*f*) appended to the convention are too clear to be misunderstood, and they contain all that is required to instruct officers how to act in these four cases, which are all that can occur.

A neutral state has no right to take cognizance of any ques-

(*b*) *The Recovery*, 6 Rob. 348. *The Maria*, 1 Rob. 349. *Le Caux v. Eden*, 2 Doug. 607. *Lindo v. Rodney*, 2 Doug. 613. *Le Louis*, 2 Dod. 238. *Pollard v. Bell*, 8 T. R. 437.

(*c*) Convention, art. iii.

(*d*) Convent., art. i.

(*e*) Convent., art. ii.

(*f*) See above, chap. 2, p. 14 and following pages.

tion arising between a belligerent and any other neutral or belligerent; even though the property, which is the subject of the question, should be brought into its port. Suppose a vessel wrongfully captured or wrongfully rescued to be brought into a neutral port; the neutral power would have no right to deliver such vessel to a neutral or belligerent claimant. It will not be disputed that neutrals have no right to interfere with possession, where it is rightful: and hence it follows that they can have no right to interfere in any case, because they have no jurisdiction to inquire into the title; and without such inquiry they cannot determine whether the possession is rightful or not. Still less could they have any right to interfere in case of a belligerent vessel rescued from the prize officer by its own crew: for such rescue (when no parol has been given) is perfectly lawful, and their possession is, consequently, rightful. In such case the captor, to use the expression of Lord Stowell, has a wolf by the ears, who may and will seize his captors, if he can (*g*).

All questions of property arising out of operations of war must, according to the law of nations, be determined by the prize courts of the captor, which are bound to administer justice indifferently to all neutral or friendly claimants. The necessity of condemnation for determining questions of property has reference only to friends and neutrals. With respect to the property of the enemy it is altogether inoperative, for such property remains liable to belligerent rights during the continuance of war: and by the intervention of a treaty of peace all titles of possession are quieted, and the prior title of the enemy is barred without condemnation, with respect to the parties to the treaty, and all persons claiming under either of them, by the general amnesty expressed or implied in such treaty. Neutral purchasers, though no parties to the treaty, are entitled to the full benefit of it, because they derive their

(*g*) *The Catherina Elizabeth*, 5 Rob. 232.

title from those who are : and a new war, though it change the relations of those who are parties to it, can have no effect on neutral purchasers who stand in the same situation as before (*h*).

Secondly, as to the rights of captors. Capture may be considered with regard, first to sole captors, and secondly to joint captors ; thirdly, to head-money.

First, as to sole captors.

The fifth and sixth sections of the Prize Acts provides that the officers and crew of any of her Majesty's ships shall have the whole right and interest to and in the proceeds of all and every ship, vessel, goods, and merchandize, which they shall have taken or hereafter shall take during the continuance of hostilities and to and in the proceeds of all and every ship, vessel, arms, ammunition, stores of war, goods, merchandize and treasure belonging to any fortress by them taken, or to any state or public trading company of any of her Majesty's enemies upon the land, or any ship or vessel, goods, or merchandize laden on board the same in any creek, river, haven, or road belonging to or defended by such fortress or in any way whatsoever belonging to such enemies, after final adjudication thereof, as lawful prize to her Majesty in the Court of Admiralty in such proportions and after such manner as her Majesty by her proclamation has already ordered and directed or shall think fit to order and direct by any proclamation hereafter to be issued.

Here according to ancient practice the interest of the Queen's cruisers is expressly limited with respect to the property in which captors can acquire any interest of their own to public property and the property of public trading companies ; the state still reserving to itself all private property in order that no temptation may be held out to unauthorized expeditions against the enemy's subjects on land (*i*).

(*h*) *The Schoone Sophie*, 6 Rob. 138.

(*i*) *The Thorshaven*, Edw. 122.

The construction of the words officers and crew with regard to those who are entitled to share must be determined by reference to her Majesty's proclamation respecting prize; and to the cases which have limited the meaning of the same words in previous acts.

The proclamation now in force appears to have been framed with a view to the decisions of the Court of Admiralty (*k*): for it gives a share to all soldiers doing duty as marines and to all passengers not declining to render assistance.

When a lieutenant going to join his own ship did duty on board a frigate, on which he had obtained a passage: it was held that he was not entitled to a lieutenant's share in a prize made by the frigate, while he was so doing duty. The officer must not only be on board, but belonging to the ship (*l*). In the case of the *Cabadonga*, Lord Anson having sunk the *Gloucester* and taken the crew and officers on board the *Centurion*: where they were entered on the supernumerary list and did duty according to their respective ranks: it was held that they were not entitled to share according to their respective ranks but only as persons assisting and doing duty on board (*m*). So where the claimant had been appointed acting lieutenant by his captain when detached, but his appointment had not been confirmed by the admiral of the fleet (*n*).

The proclamation directs, that where an inferior flag officer is sent to reinforce a superior officer on any station, the superior officer shall not share in any prize taken by the inferior flag officer before he has arrived within the limits of that station, unless the inferior officer shall have received some order directly from and shall be acting in execution of some order issued by such superior flag officer. These terms are more favourable to

(*k*) *The Alert*, 1 Dod. 236.

(*l*) *The Nostra Signora del Carmen*, 6 Rob. 302.

(*m*) *Wemys v. Linzee*, 1 Doug. 328.

(*n*) *The Nostra Signora del Coro*, 6 Rob. 305.

superior flag officers than those of the proclamation in the last war, which made the mere arrival not sufficient without the receipt of some orders from the commander on the station (*o*). It is not necessary that the word reinforce should be used; it is sufficient if an inferior officer is directed to put himself under the command of his superior for the purposes of general co-operation (*p*). When a ship sent from the Irish station to Portsmouth to refit and return without loss of time received orders from the Admiralty depending upon circumstances, which might render them inconsistent with the commands of the admiral, and made a prize on ground common to the Irish and other stations, it was held, that the Admiral was not entitled to share (*q*). But where a prize was made within the limits of the station by a ship put by the admiral under the command of a captain, acting under the orders of the Admiralty and of the admiral in conformity with them, the admiral was held entitled to share (*r*). If one party seizes a vessel and afterwards abandons her, and then another takes the same vessel, the last seizor is in law the only captor. If a commander relinquishes what would have been good prize to himself and his crew; the interest of himself and of all under him is concluded by his act, and the same vessel lies open to seizure by any other captor, who may exercise a sounder discretion (*s*).

Secondly, of joint capture.

The act of parliament and the proclamation give the benefit of prize to the takers, by which term are naturally to be understood those who actually take possession, or those affording an actual contribution of endeavour to that event. But

(*o*) *The San Antonio*, 5 Rob. 209.

(*p*) *Ibid.*

(*q*) *The Orion*, 4 Rob. 362.

(*r*) *The Desiree*, 4 Rob. 422.

(*s*) *The Diligentia*, 1 Dod. 404.

the courts of law have extended the term taker to those who, not having contributed actual service, are still supposed to have rendered a constructive assistance, either by conveying encouragement to the captor or intimidation to the enemy. Capture has, therefore, been divided into actual and constructive capture.

Different principles apply in cases when ships are associated by public authority on a common service, and where they are not so associated together. In cases of vessels not associated by public authority there must be proof of an intention to capture, and the claimant must at least be in sight of the capturing and captured vessel. The mere circumstance of being in sight is sufficient, in the case of Queen's ships, to raise a presumption that they are there with intent to capture, for they are under a constant obligation to attack the enemy wherever seen. A contrary route would defeat the claim; but if nothing appears, either on the one side or on the other, as to that fact, mere presence will entitle a Queen's ship to the character of joint captor. Hence, where a King's ship was proved to have been in sight in the morning, and at the time of the capture, her claim to share was allowed, although she was becalmed and had not joined in the chase (*t*).

To support a claim of joint capture founded upon being in sight, it must be proved that the vessel claiming was seen by the prize as well as by the actual captor. Both those facts must be established; the one by direct evidence, the other by implication and necessary inference (*u*). Being in sight means being seen by the prize as well as by the actual captor, and thereby causing intimidation to the enemy and encouragement to the friend. One of these will not do with-

(*t*) *The Flore*, 5 Rob. 268. *The Galen*, 2 Dod. 19. *The Drie Gebroeders*, 5 Rob. 339.

(*u*) *The Fadrelandet*, 5 Rob. 120.

out the other (*v*). It is not essential, but a measure of proper precaution and of great convenience, that an interest should be asserted at the time. Where expences were incurred by an actual captor, in consequence of an omission of this precaution, they were directed to be paid out of the proceeds (*w*). A claim of joint capture founded on being in sight, cannot be sustained where the identity of the prize and vessel seen is not established (*x*). Nor can it be supported on the sole testimony of persons on board the ship claiming as joint captor (*y*). A written and attested acknowledgment by the actual captor (the captain of a privateer) of a King's ship being in sight and in chase of the prize at the time when possession was taken, not being extorted by duress or procured by collusion, was held to be conclusive (*z*). A King's ship has no authority to dispossess the actual captor, whether privateer or non-commissioned vessel, but may put some one on board to take care of her interest (*a*). A King's ship seen by the prize steering in pursuit and continuing in pursuit up to the time of capture, will be entitled to share, though the sight is now and then obscured. Nor will the circumstance of her steering a course different from that of the actual captor be material; for the situation and bearing of the ships to the prize and to each other may frequently make it proper that they should shape their courses in directions not precisely the same (*b*). Where a joint chaser was in sight when darkness came on, and continued steering in the same course

(*v*) *La Melanie*, 2 Dod. 122.

(*w*) *The Amitie*, 6 Rob. 268.

(*x*) *The Lord Middleton*, 4 Rob. 153.

(*y*) *The Fadrelandet*, 5 Rob. 120. *The John Turner*, 1 Dod. 363. *La Bella Coquette*, 1 Dod. 19.

(*z*) *The San Jose*, 6 Rob. 244.

(*a*) *La Flore*, 5 Rob. 271. *The Maryanne*, 5 Rob. 13. *The Sacra Familia*, 6 Rob. 362. *The San Jose*, 6 Rob. 244.

(*b*) *The Sparkler*, 1 Dod. 359.

by which it was before nearing the prize, and the prize continued to steer the same course, the ship was held entitled to share as joint captor, as she would have continued in sight if darkness had not intervened (*c*). A discontinuance of chase occasioned by the fraud or negligence of the actual captor will not defeat the claim of a joint captor. In the case of *The Herman Parlo* the actual captor had extinguished his light in order to prevent other ships from seeing the chase or capture: and it was held, that no effect should be given to any conduct on the part of the other ships so produced; and that the other ships, though not in sight, nor actually chasing, should share (*d*). In the case of *The Eendraught*, the alleged joint captors had fallen in with the actual captor the day before, and were known by him to be British vessels. The next day all three chased, and the claimants were in sight when the captor came up with the prize. On coming up the captor hoisted American colours. By this artifice, which was intended to defer the capture and to defraud the other ships of their rights, he induced the prize to change her course, and did not take possession till the other ships were out of sight. The Lords of Appeal confirmed the sentence of the court below admitting the claim of the joint captors, and condemned the appellant in the costs of appeal and in the costs below (*e*). So, an actual captor is liable to be visited with costs, where he has given false information with intent to defraud a joint captor of his rights (*f*). Where two convoying ships were detached to reconnoitre two ships in sight, which turned out to be a British frigate, and a ship which she afterwards captured; and the frigate signalled her own number but made no signal of an enemy's ship a-head,

(*c*) *The Union*, 1 Dod. 346.

(*d*) *Herman Parlo*, Lords, cited per Cur. 3 Rob. 8.

(*e*) *The Eendraught*, 3 Rob. Appen. 35.

(*f*) *The Sparkler*, 1 Dod. 359.

and it was therefore concluded that the ship a-head was a friend, and the convoying ships were recalled: it was held, that if the signal ought to have been made, and was through neglect or inattention not made, though without any intention to deceive, the discontinuance of chase on the part of the convoying ships was produced by that neglect and inattention, and they would therefore be entitled to share (*g*). So where a non-commissioned schooner had maintained a severe engagement with the prize in the morning, and though beaten off, continued to hang about her the whole day; and afterwards the actual captor came up, and in consequence of his hoisting French colours the schooner sheered off, but came up immediately upon the captain hoisting British colours and taking possession; it was held that the schooner's change of course was no discontinuance of chase (*h*). Convoying ships are under no disability of claiming as joint captors, where the capture is not made at such a distance, as would remove them from the performance of their special duty of protecting their convoy (*i*).

The presumption arising from being in sight may be repelled by contrary circumstances tending to shew, that there was either no knowledge of the capture that was going on, or that there was no intention to assist it. In one case the Lords of Appeal decided, that the act of steering a contrary course would repel any inference raised on the mere presumption (*k*). A claim of joint capture is defeated where the chase is discontinued before capture (*l*). Where a ship in pursuit changed her course in the night with a view to intercept the prize, by which change she was carried away

(*g*) *The Waksamheid*, 3 Rob. 1.

(*h*) *La Virginie*, 5 Rob. 124.

(*i*) *The Waksamheid*, 3 Rob. 1. *The Fury*, 3 Rob. 9.

(*k*) Cited per Cur. *The Drie Gebroeders*, 5 Rob. 342.

(*l*) *The Rattlesnake*, 2 Dod. 35.

from the object of pursuit, it was held, that a change of course upon an erroneous conjecture amounted to a discontinuance of chase, and that she was not entitled to share (*m*). Where a ship, after reconnoitring the prize, had stood off on another course, it was held, that this was a case of voluntary and deliberate dereliction (*n*). So a previous renunciation of all risk and responsibility on the part of the master of a privateer, who would otherwise have been entitled as joint captor, was held to bind his owners and crew and to exclude all claim (*o*). Where ships are in sight under such circumstances, that they can occasion no terror to the enemy, nor afford any encouragement to the friend, they are not entitled to share. In the case of *The Margaret*, in the year 1746, there were three ships asserting an interest. One, *The Queen of Hungary*, was present at the time of capture, but performed no service; another, *The Trial*, was in sight, but at a considerable distance, and performed no service; the third ship, *The Terrible*, engaged the enemy for three hours, and effected the capture. Three-fourths of the prize were awarded to *The Terrible*; one-fourth to *The Queen of Hungary*; and nothing to *The Trial* (*p*). In the case of *The Melanie*, the actual captor had exchanged signals during the chase with a squadron lying on the opposite side of the Isle of Oleron, whose masts were seen by the prize at the time of capture. The squadron was engaged in a blockade, and lying with sails furled at the bottom of a bay, into which the wind was blowing strong: the court pronounced against the interest of the squadron (*q*).

A ship or fleet, that by accident or design diverts the course

(*m*) *Le Niemen*, 1 Dod. 9.

(*n*) *The Lord Middleton*, 4 Rob. 153.

(*o*) *The William and Mary*, 4 Rob. 381.

(*p*) *The Margaret*, cited per Cur. 2 Dod. 125.

(*q*) *La Melanie*, 2 Dod. 122.

of an enemy, and by so doing occasions her capture by a totally distinct force is not thereby entitled to share as joint captor (*r*). *The Amethyst* and *Emerald* were separately in pursuit of a French frigate, and which changed her course on perceiving *The Emerald*. *The Emerald* lost sight of her in a fog, and continued to sail in search of her. *The Amethyst* engaged her, and when *The Amethyst* and the enemy were both crippled *The Arethusa* came up and took possession. *The Emerald* not being then in sight, was held not entitled to share (*s*). A ship not in sight at the time of the capture is not entitled to share because she had joined in the chase and been delayed by orders to pick up her boats. It may be deemed a hardship that a vessel should lose the benefit of sharing in the prize in consequence of the delay occasioned by those orders, fairly given and without any intention of depriving the ship of her share of the prize. The answer is, that it is the first duty of King's officers to obey the lawful commands of their superiors; and that views of mere private advantage are of secondary consideration, and must give way to the imperative requisitions of the public service (*t*). Constructive assistance by the boats of a ship not in sight cannot entitle their ship to share in the prize, though actual capture by the boats would be sufficient for that purpose, for they are a part of the force of the ship (*u*). Where a private ship of war and a King's ship were lying in harbour, and sent out their boats to make a capture, which was effected by the boats of the King's ship, it was held that the boat of the privateer, not coming up at the time of the capture, was not entitled to share, and could convey no interest to her ship, though the boat's crew assisted in navigating the prize into port. Where a boat actually takes, the ship to which it

(*r*) *Le Niemen*, 1 Dod. 9.

(*s*) *Ibid.*

(*t*) *The Financier*, 1 Dod. 61.

(*u*) *La Belle Coquette*, 1 Dod. 18.

belongs has done, by means of this boat, all that it could have done by the direct use of its own force. In the case of mere constructive capture, the construction which is laid upon the supposed intimidation of the enemy, and the encouragement of the friend, applies very weakly to the case of a boat, an object which attracts little notice upon the water, and whose character, even if discerned, may be totally unknown. It would be still more unreasonable if the constructive co-operation of such an object would give an interest to the entire ship to which it belongs. When a ship is in sight she is conceived to co-operate in the proportion of her force; but there is no room for such a presumption when she co-operates only by the force of her boat (*v*). Revenue cutters are on the same footing as privateers, with respect to constructive joint capture, and are not entitled to share by the mere fact of being in sight; for not being under the same obligation as King's ships to attack the enemy, they are not entitled to the same presumption in their favour (*w*).

Where a privateer attempted to get between the prize and the land, and was of service by diverting the attention of four frigates, by whom she was discovered and chased, it was held that such diversion was a mere casualty; that if she had been captured, it would have produced exactly the same effect, and yet it would have been perfectly ludicrous to pronounce for her joint interest of capture under such circumstances (*x*).

Where ships are associated by public authority for a common service, a ship detached from the squadron, though for purposes immediately connected with the main enterprise, unless she is sent off after the operation has begun, or returns before it is accomplished, is not entitled to share. If a ship was detached in sight of the enemy, and

(*v*) *The Odin*, 4 Rob. 318.

(*w*) *The Bellona*, Edw. 63.

(*x*) *The Santa Brigada*, 3 Rob. 52.

under preparation to chase, she ought to share ; but if she was sent away after the enemy was descried, but before any preparations for chase or any hostile movements had taken place, it would be otherwise ; there must be some actual contribution of endeavour, as well as a general intention, to assist. *The Vestal* being detached with other ships to watch the motions of the enemy, when the fleet under Admiral Duncan returned to Yarmouth, was sent to England to give information to the Admiralty and Admiral Duncan the day after the Dutch fleet under Admiral Winter was descried, and did not join the fleet till two days after the engagement, when she assisted in securing the prisoners and taking home the captured ships. It was held, that the chase could not be deemed to commence till Admiral Duncan's fleet came up, the detached ships being not of sufficient force to do more than reconnoitre the enemy ; and it was decreed, that *The Vestal* was not entitled to share with the fleet (y). In the case of *The San Joseph*, two vessels were detached from the fleet to chase two strange ships appearing in sight, the fleet bearing up all the time as fast as possible to support them. The chasing vessels took the two ships first appearing, and also a third, upon which the dispute arose. The chief doubt arose owing to the night coming on, for if it had been day the fleet would clearly have been in sight ; and it was, at all events, known clearly to be at hand, and ready to give any support that might be wanting. Under these circumstances the Court of Appeal affirmed the sentence of the court below, pronouncing for joint capture (z). If one ship of a squadron takes a prize in the night unknown to all the rest, the whole fleet would be entitled to share, though possibly the capture might have been made out of sight of most of the ships of the fleet if it had been made at noonday ; for a fleet so associated is considered as one body,

(y) *The Vryheid*, 2 Rob. 16.

(z) Lords, 1784, cited per Cur. 2 Rob. 25.

unless detached by orders or entirely separated by accident ; and what is done by one continuing to compose in fact a part of the fleet, enures to the benefit of all. The only question is, whether the capture was made while the capturing ships composed in fact a part of the fleet. Where a capture was made by ships composing part of the blockading squadron of the Texel, out of sight of the fleet and without any concurrence in chasing, and the captured ships were not seen by the fleet till they were in possession of the captors, the Court held, that the title of the fleet to share depended upon the question, whether the ships were detached, or whether they were sent only on the look out preserving their connexion with the fleet and dependence upon it. Their orders being to watch well the motions of the enemy, to cruise between certain points, joining the fleet occasionally for communication, and to avoid being at such a distance as not to observe signals, it was held, that it was impossible to hold this to be a detached service, and the fleet were held entitled to share (a). So vessels sent to reinforce a squadron to which an island had surrendered, and vessels which had formed part of the squadron, but had been separated from it, and arriving before terms of capitulation had been agreed on, were held entitled to share (b). So where smaller ships of a blockading squadron were sent nearer the shore, than the larger ships could safely venture (c). So where a ship coming out of a blockaded port is taken by one of the ships of the blockading squadron stationed off the mouth of the harbour, while the rest of the squadron are stationed at some distance (d). In such cases the claims of particular ships forming part of the squadron will not be excluded by a physical impossibility of active co-operation arising from the state of

(a) *The Forsigheid*, 3 Rob. 311 ; Edw. 124.

(b) *The Island of Trinidad*, 5 Rob. 92.

(c) *The Harmonie*, 3 Rob. 318.

(d) *The Henriette*, 2 Dod. 96.

the wind (*e*). Where two vessels were in sight, and the actual captor, *The Rover*, exchanged signals with *The Beagle*, under command of a senior officer in chase of the same vessel, and was by him directed to go in chase of the other, which was captured by *The Rover* out of sight of *The Beagle*, which continued in chase of the other vessel; it was held, that the commander of *The Rover*, being under the orders of his superior engaged in the common enterprize for the purpose of capturing both vessels, *The Beagle* was entitled to share (*f*). If two vessels are associated for one common purpose, the continuance of chase is sufficient to give the right of joint capture. Sight under such circumstances is by no means necessary, because, exclusive of that, there exists that which is of the very essence of the claim, encouragement to the friend and intimidation to the enemy. Where two vessels join in chase under signal from a superior officer, they are to be considered as consorts, for the particular business in which they are acting under orders so given, and for the purpose of any capture arising out of it (*g*). Where a squadron was blockading certain ships of war in the bay of Naples, and a summons to surrender was sent in, it was held that the blockade commenced, not when the summons was sent in, but from the moment when the ships were assembled long before to stop the egress of vessels, and that a ship forming part of the squadron, and present after they were so assembled, was entitled to share, though she was afterwards detached, and did not return till after the surrender (*h*). So where a ship was under the orders of the commander in chief of a force, by part of which an attack was made on Savona, and was lying in sight of the scene of action, and com-

(*e*) *The Guillaume Tell*, Edw. 6.

(*f*) *The Empress*, 1 Dod. 368.

(*g*) *L'Etoile*, 2 Dod. 106.

(*h*) *The Naples Grant*, 2 Dod. 273.

municating information to the commander in chief by signal; it was held, that she was entitled to share (i). So, where soldiers were landed from the fleet to cut off the communication between the enemy's fleet and its own coast; that was held to be a case of preconcert and co-operation of the most effectual kind, and though possession was taken by the fleet, the military forces were held entitled to share (k). By the practice of the navy, prize interests, acquired by a prize master on board a captured vessel, enure to the benefit of the whole ship's company. The rule has not been recognised or established by decrees of the Court of Admiralty, but has prevailed, without judicial authority, on the general notion which has been entertained of the intrinsic equity of such a communication of interest (l). So a King's ship, though not in sight, is entitled to share as joint captor in prizes made by a tender attached to her by orders of the Admiralty, and acting under her command (m). But it is otherwise where the tender is not so attached (n). Where a prize was made by part of the fleet stationed off Cadiz not to prevent the egress of merchant vessels, but to watch the enemy's fleet preparing for sea; it was held that the rest of the fleet were not entitled to share, when the prize was condemned as enemy's property, and the capture did not involve any question of breach of blockade, and, consequently, was not within the purpose for which they were associated (o). When a ship was captured at a distance of twenty leagues from Malta by ships forming part of a squadron stationed to watch the harbour of La Vallette, which were sent to look out for her, while the rest kept their station: it was held that the rest of the squadron were not entitled to

(i) *Genoa and Savona*, 2 Dod. 88.

(k) *The Hoogsharpe*, Lords, 1786, cited per Cur. 2 Rob. 76.

(l) *The Frederick and Maryanne*, 6 Rob. 213.

(m) *The Anna Maria*, 3 Rob. 211.

(n) *The Charlotte*, 5 Rob. 280.

(o) *The Nordstern*, Lords, 1809, cited per Cur. Edw. 126.

share (*p*). When two vessels that formed part of a squadron employed to capture an island were separated, one by stress of weather and the other in chase of a privateer, they were not entitled to share in a capture of ships made during their absence (*q*). Transports associated with fleets are not entitled to share, unless their employment has been made immediately applicable to the purposes of direct military operations, in which they have taken part. The same rule applies to commissioned vessels not being commissioned against the particular enemy who is the object of the expedition, although he has been intimidated by their appearance (*r*). So where a ship of war conveying reinforcements to Lord William Bentinck at Leghorn, heard the firing of a joint attack made by Lord William Bentinck and the fleet upon Genoa, and returned from Leghorn and was in sight of Genoa at the time of the capitulation: but the captors were not aware of the ship's presence, nor the ship of the force employed, or of the object of attack, she was held not entitled to share (*s*). So it was held that a ship despatched with a view to a contingent expedition to the coast of South America, and arriving at Buenos Ayres after the surrender of the place, was not entitled to share. It is a fixed rule that no services antecedent or subsequent, unless the ship is employed in the identical service of the expedition, will impart a prize interest (*t*). Where vessels were captured by ships forming part of Lord Keith's fleet employed in the blockade of Genoa, but detached to co-operate with an allied army which had driven the enemy from a battery by which the vessels were protected: it was held, first, that the fleet was not entitled to share; secondly,

(*p*) *The Genereux*, Lords, 1803, cited per Cur. Edw. 16.

(*q*) *The Island of Trinidad*, 5 Rob. 92.

(*r*) *The Cape of Good Hope*, 2 Rob. 274.

(*s*) *Genoa and Savona*, 2 Dod. 88.

(*t*) *Buenos Ayres*, 1 Dod. 28.

that this was not a capture by a conjunct expedition within the meaning of the Prize Act, which applies only to joint expeditions of British land and sea forces against some fortress upon the land, which is accessible by land on the one side and by sea on the other ; thirdly, that an agreement between Lord Keith and the commander-in-chief of the allied army for the division of all booty, would not comprise captures at sea (u).

In the case of a claim on the part of the army to share in a capture made by the fleet, the burthen of proof lies upon them to shew, that there was an actual co-operation upon their part assisting to produce the surrender. Between land and sea forces acting independently of each other, no privity of purpose can be presumed, and therefore to establish a claim of joint capture between them, there must be a contribution of actual assistance, and the mere presence, or being in sight, will not be sufficient. Where there is no preconcert, it must not be a slight service, but some very material service that will be deemed necessary to entitle an army to the benefit of joint capture. When there is preconcert it is not of so much consequence that the service should be material, because then each party performs the service that was previously assigned to him. The evidence by which such a claim is supported must be clear and consistent, because it lies upon those setting up a claim of joint capture to make out their case, the presumption is on the side of the actual captor. In the case of *The Dordrecht*, a victualling party from a Dutch squadron in Saldanha Bay, the Cape of Good Hope being in possession of the British army, was compelled, by advanced parties of the army, to abandon a supply of cattle which they were preparing to remove from the coast. The whole army was in sight of

(u) *The Stella del Norte*, 5 Rob. 349.

the squadron some hours before the arrival of the English fleet, and shots were exchanged between the advanced corps and a Dutch frigate. In a few hours the English fleet made its appearance, the Dutch squadron being then so situated that the army could neither take nor annoy them. When the fleet arrived, the squadron had no chance of escape, and an engagement was hopeless in regard to the superiority of the English fleet, and the mutinous disposition of the Dutch crews. It was said that the presence of the army prevented them from destroying their ships, and there was some evidence to shew that the English general had given notice to the commander-in-chief of the Dutch squadron, that if they attempted to destroy their ships no quarter would be given to the crews escaping on shore. It was held, that the principle of terror to support this claim must be that of terror operating, not mediately and with remote effect, but directly and immediately influencing the capture; and that, if such principle of denunciation were sufficient, a crowd of inhabitants on the coast would be entitled, if they had threatened to knock those on the head who attempted to escape on shore after destroying their ships. Under all the circumstances of the case the court pronounced against the claim of the army (v).

Thirdly, as to head-money or bounty granted on capture of the enemy's armed ships or privateers, the old provision has been substantially re-enacted in the eleventh section of the Prize Act (Russia), 1854.

The subject of head-money has undergone some variations. Originally it was the reward of actual combat only. In later times the necessity of actual combat has been dispensed with, and capture itself, whether produced by actual combat or not, has been held a sufficient foundation for the claim. But there is no case, when head-money has been granted, where the act of capture has not been consummated. In the case of *The*

(v) *The Dordrecht*, 2 Rob. 55.

Clorinde, after an engagement, in which *The Eurotas* had all her masts shot away, the two ships separated, *The Eurotas* being so crippled as not to be able to keep within gunshot. By noon the next day she was ready for action, and was coming up fast; but *The Dryad* came up, and, after firing a few shots, took possession of her, while *The Eurotas* was four miles off. The court rejected the exclusive claim of *The Eurotas*, but pronounced for her interest in conjunction with *The Dryad* (w). Head-money is the peculiar and appropriate reward of immediate personal exertion, and a claim to head-money has always been considered in a more rigid manner by the courts than those which arise out of the general interests of prize. In several cases the prize has been condemned to one man of war as actual captor and to others as assisting in the capture; but the bounty-money has been ordered to be paid exclusively to the actual captor, where the others have not been actually engaged. The mere endeavour to come up and close with the enemy is not sufficient, there must be an actual participation in the engagement and joining in battle (x). Association in chase furnishes no claim to head-money, without an association in combat or capture. It was held by the Lords, in the case of *L'Hercule*, that where the chase had been seen by the whole squadron, even the ships detached by signal were not entitled to share in the bounty or head-money with the actual captor, though in sight at the time of the capture (y). In the case of a general engagement the whole fleet is supposed to be engaged with the whole of the opposing force. It is often so in fact, and always so in the supposition of law; and therefore all are equally entitled to share in the benefit of prize and head-money (z). But the court has gone still

(w) *The Clorinde*, 1 Dod. 436.

(x) *La Gloire*, Edw. 280.

(y) *L'Alerte*, 6 Rob. 238.

(z) Per Cur. *La Gloire*, Edw. 282.

further, and has pronounced for the interest of a vessel which was not shewn, with any degree of certainty, to have arrived within gun-shot. *The Weser*, having been for some time engaged in action with two other vessels, on the appearance of *The Rippon* surrendered; such immediate submission was held to entitle *The Rippon* to share in the head-money. So where the enemy's fleet was destroyed by fire-ships which formed part of a blockading fleet, and were dispatched by the commander-in-chief on that service, it was held that the rest of the fleet were entitled to share in the head-money, although it never approached within gun-shot of the scene of action (a). The decision in these two cases seems to require reconsideration; for it extends, by an arbitrary enlargement of the statute, to constructive assailants, that bounty which was intended for actual combatants.

Where a capture can be considered as a continuation of a general action, the whole fleet would be equally entitled to head-money, notwithstanding the formal surrender to one particular ship. But it is otherwise where the capture is not an immediate consequence of the general action. Where a ship which had formed part of the enemy's fleet at Trafalgar, had escaped into port, and having been sent out to assist vessels in distress, was captured by *The Donegal*, which had been detached by Lord Nelson before the engagement commenced, and did not join Lord Collingwood till the day after the battle, it was held, that neither the capturing nor captured vessel could be identified with the respective fleets between which the engagement had taken place, and that the fleet was not entitled to share. In the same case the court pronounced against the claim of *The Leviathan*, which in making a signal to another vessel fired a shot, which fell between *The Donegal* and her prize, but without any inten-

(a) *The Ville de Varsovie*, 2 Dod. 301.

tion of taking part in the combat (*a*). Where a prize was re-captured and again taken and condemned to the second taker, it was held that head-money was due to the original taker, notwithstanding the re-capture (*b*). Where an enemy's ship was run aground and destroyed, it was held that head-money was due for men escaping on shore, who were on board when the action commenced (*c*). But head-money is not due for British prisoners on board the prize (*d*). Head-money is not due when the ship is neither taken nor destroyed. Where a King's ship had driven an enemy's frigate on shore, and had attempted to destroy her without success, but had left her in such a disabled state that the enemy were under the necessity of breaking her up, it was held that head-money was not due (*e*). But where an enemy's ship was set on fire by her crew and totally destroyed, on the approach of the force coming to attack her, head-money was pronounced to be due (*f*). Head-money is not due for the capture of armed vessels which are not commissioned (*g*). It has been held that head-money is due for the capture of men of war having cargoes on board, but not for privateers under the same circumstances. This absurd distinction was upheld by the court against its own judgment, in deference to precedents which seem to be equally at variance with reason and with the words of the act (*h*). Head-money is not due on ships captured by the joint forces of the army and navy, in harbours, rivers, and other such places as are objects of joint attack in conjunct expeditions (*i*).

(*a*) *The El Rayo*, 1 Dod. 42.

(*b*) *The Matilda*, 1 Dod. 367.

(*c*) *The Babillion*, Edw. 39.

(*d*) *The San Joseph*, 6 Rob. 331.

(*e*) *L'Elise*, 1 Dod. 442.

(*f*) *The Uranie*, 2 Dod. 172.

(*g*) *The Dutch Schuyts*, 6 Rob. 48.

(*h*) *La Francha*, 1 Rob. 157. *The Santa Brigada*, 3 Rob. 58. *The Hirondeila*, 3 Rob. 57.

(*i*) *La Bellone*, 2 Dod. 343.

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APPENDIX.

(A.)

1. *Form of certificate and pass under Swedish Treaty of 1661.*

We N. N. governor [or *chief magistrate, or the commissioners of the duties of customs*] of the city [or *province*] of N. [the title of office of the respective government of that place being added] do make known and certify, that on the day of the month of in the year of

N. N. N., citizens and inhabitants of N., and subjects of his sacred Royal Majesty of Sweden, personally appeared before us, in the city or town of N., in the dominions of his sacred Royal Majesty of Sweden, and declared to us upon the oath by which they are related and bound to our most gracious sovereign his sacred Royal Majesty of Sweden and to our city, that the ship or vessel, called N., of about lasts or tons belongs to the port, city, or town of N., in the dominions of N., and that the said ship does rightly belong to him or other subjects of his sacred Royal Majesty of Sweden, that she is bound directly from the port of N. to the port of N., laden with the following merchandize, viz. [here shall be specified the goods, with their quantity and quality: for example, about so many chests or bales; about so many hogsheads, &c., according to the quantity and condition of the goods], and affirmed on the oath aforesaid, that the said goods and merchandize belong only to the subjects of his sacred Royal Majesty of Sweden, and that N. N. N. declared upon their oath that the said goods above specified and no others are already put to board or are to be put on board the above-named ship for the said voyage, and that no part of those goods belongs to any other person

whatsoever, &c. [*what follows relates only to the property of the goods, which is immaterial under the late order in council*]. Therefore whereas after strict examination by us [*the governor, or chief magistrate, or commissioners of the duties and customs*] of the city aforesaid it fully appears that the ship or vessel and goods on board the same are free and do truly and really belong to the subjects of his sacred Royal Majesty of Sweden or to the inhabitants of other nations as aforesaid, we do most humbly and earnestly require of all and singular the powers by land and sea, kings, princes, republics, and free cities, also of the generals of armies, admirals, commanders, officers, and governors of ports, and all others to whom the custody of any harbour or sea is committed, which happen to meet this ship on her voyage, or if she chance to fall in among, or pass through their squadrons, or to stay in their harbours, that for the sake of the treaties and friendship which subsist respectively between them, or whoever are his superiors, and his sacred Royal Majesty our most gracious sovereign the king of Sweden, that they will not only permit the said captain with the ship N. and the men, goods and merchandize to her belonging, to prosecute her voyage freely without let or molestation; but also if he think fit to depart out of the said harbour elsewhere, that they will shew all kind offices to him and his ship as a subject of his sacred Royal Majesty of Sweden as they shall in like manner experience the same from his sacred Royal Majesty and from all his ministers and subjects in the like or any other case. In witness whereof, we have taken care that these presents, signed by our own hands, be sealed with the seal of our city.

Given, &c.

2. *The like under Danish treaty of 1670.*

Be it known to all and singular to whom these our letters of safe conduct shall be shewn, that our subject and citizen of our city of hath humbly represented unto us, that the ship, called of the burthen of tons doth belong unto them and others our subjects, and that they are sole owners and proprietors thereof, and is now laden with the goods which are contained in a schedule which she hath with her from our officers of customs, and do solely, truly, and really belong, &c., bound immediately from the port of to such other place or places where she may conveniently trade within, the said goods being not prohibited nor belonging, &c., which the

aforesaid our subject having attested by a writing under his hand, and affirmed to be true by oath under penalty of confiscation of the said goods, we have thought fit to grant him these our letters of safe conduct, and therefore we do respectfully pray and desire all governors, &c., that by virtue of the league and amity, &c., they suffer the said master with the ship persons, things, and all merchandize on board her not only freely and without molestation, detention, or impediment to any place whatsoever freely to pursue his voyage, but also to afford him all offices of civility as to our subject if there shall be occasion; which on the like or other occasion we or ours shall be ready to return.

Given the day of in the year

We the presidents, consul, senators of the city of do attest and certify, that on the day of in the year personally before us came and appeared citizen and inhabitant of the city or town of and under the oath wherein he stands bound to our sovereign lord the king, did declare unto us that the ship or vessel of the burthen of tons doth belong to the port, city, or town of in the province of and that the said ship doth justly belong to him and others, subjects of our said sovereign lord, now bound directly from the port of laden with goods mentioned in a schedule received from the officers of the customs; and he hath affirmed under the oath aforesaid, that the forementioned vessel with her goods and merchandize doth only belong to subjects of his Majesty, and doth carry no goods prohibited which belong, &c.

In testimony whereof we have caused this certificate to be subscribed by the Syndic of our city and sealed with our seal.

Given, &c.

3. *Form of certificate in case of convoy under the maritime convention between Great Britain, Denmark, and Sweden.*

Be it known, that we have given leave and permission to N., of the town or place of N., master or commander of the vessel N., belonging to N., of the port of N., burthen tons or thereabouts, lying at present in the port or haven of N., to sail to N., laden with N., on account of N., after that his vessel shall have been visited before sailing in the usual manner by the officers appointed for that purpose; and the said N. or any other person empowered to

take his place shall be bound to produce in every port or haven when he shall enter with the said vessel his present leave and to carry the flag of N. during his present voyage.

In testimony whereof, &c.

4. Form of certificate under Dutch treaty of 1667.

To the most serene, &c., emperors, kings, &c., who shall see these presents. We burgomasters and governors of the city of do certify that shipmaster appearing before us hath declared by solemn oath, that the ship called containing about lasts, of which he is at present the master, belongeth to inhabitants of the United Provinces, so help him God ; and as we would willingly see the said shipmaster assisted in his just affairs, we do request you and every of you, when the above said master shall arrive with his ship and goods, that you will please to receive him courteously and use him kindly, admitting him upon paying the usual dues, tolls, and other customs, to enter into, remain in, and pass from your ports, rivers, and territories ; and there to trade, deal, and negotiate in any port or place, in such sort and manner as he shall desire, which we shall most readily acknowledge on like occasion.

In witness whereof we have caused the seal of our city to be thereunto put.

5. The treaty of commerce between Great Britain and Morocco, Article V., refers to a form of passport, but no form is given in the printed copy of the treaty.

(B.)

HER MAJESTY'S DECLARATIONS, PROCLAMATIONS, AND
ORDERS IN COUNCIL, with reference to the commence-
ment of hostilities against the Emperor of all the Russias.

I.—*By the Queen. A Proclamation.*

VICTORIA R.

Whereas by the Customs Consolidation Act, 1853, section 18th Feb. 1854.
150, certain goods may, by proclamation or order of her Majesty in council, be prohibited either to be exported or carried coastwise: and whereas we, by and with the advice of our privy council, deem it expedient and necessary to prohibit the goods hereinafter mentioned, either to be exported or carried coastwise. We, by and with the advice aforesaid, do hereby order and direct, that from and after the date hereof, all arms, ammunition, and gunpowder, military and naval stores, and the following articles, being articles which we have judged capable of being converted into, or made useful in increasing the quantity of military or naval stores; that is to say, marine engines, screw propellers, paddle wheels, cylinders, cranks, shafts, boilers, tubes for boilers, boiler plates, fire bars, and every article, or any other component part of an engine or boiler, or any article whatsoever, which is, can or may become applicable for the manufacture of marine machinery, shall be and the same are hereby prohibited, either to be exported from the United Kingdom or carried coastwise.

Proclamation prohibiting the exportation of arms, stores, &c.
And see Order 11th April, 1854.

Given at our court at Buckingham Palace, this eighteenth day of February, in the year of our Lord one thousand eight hundred and fifty-four, and in the seventeenth year of our reign.

God save the Queen.

II.—*By the Queen. A Proclamation.*

VICTORIA R.

Whereas by an Act of Parliament, passed in the fifty-ninth year of the reign of his late Majesty King George the Third, entitled "An Act to prevent the enlisting or engage- 9th March, 1854.
Proclamation against the

fitting out or
equipping
vessels for
warlike pur-
poses.

ment of his Majesty's subjects to serve in foreign service, and the fitting out or equipping in his Majesty's dominions, vessels for warlike purposes, without his Majesty's license ;" it is amongst other things enacted, " that if any person within any part of the United Kingdom, or in any part of his Majesty's dominions beyond the seas, shall, without the leave or license of his Majesty, his heirs or successors, for that purpose first had, and obtained under the sign manual of his Majesty, his heirs or successors, or signified by order in council, or by proclamation of his Majesty, his heirs or successors, equip, furnish, fit out, or arm, or attempt or endeavour to equip, furnish, fit out, or arm, or procure to be equipped, furnished, fitted out or armed, or shall knowingly aid, assist, or be concerned in the equipping, furnishing, fitting out, or arming of any ship or vessel, with intent or in order that such ship or vessel shall be employed in the service of any foreign prince, state, or potentate, or of any foreign colony, province, or part of any province, or people, or of any person or persons exercising or assuming to exercise any powers of government in or over any foreign state, colony, province, or part of any province, or people, as a transport or store ship, or with intent to cruise or commit hostilities against any prince, state, or potentate, or against the subjects or citizens of any prince, state, or potentate, or against the persons exercising or assuming to exercise the powers of government in any colony, province, or part of any province or country, with whom his Majesty shall not then be at war, or shall, within the United Kingdom or any of his Majesty's dominions, or in any settlement, colony, territory, island, or place belonging, or subject to his Majesty, issue or deliver any commission for any ship or vessel, to the intent that such ship or vessel shall be employed as aforesaid, every such person so offending shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, upon any information or indictment, be punished by fine and imprisonment, or either of them, at the discretion of the court in which such offender shall be convicted, and every such ship or vessel, with the tackle, apparel, and furniture, together with all the materials, arms, ammunition, and stores, which may belong to or be on board of any such ship or vessel shall be forfeited." And whereas it has been represented to us, that ships and vessels are being built in several places within the United Kingdom, and are being equipped, furnished, and fitted out especially with steam machinery, with intent that they shall be employed as aforesaid, without our royal leave or license for that purpose, first had or obtained or signified as aforesaid. We have therefore thought fit, by and with the advice of our privy council, to

issue this our royal proclamation, warning all our subjects against taking part in such proceedings, which we are determined to prevent and repress, and which cannot fail to bring upon the parties engaged in them, the punishments which attend the violation of the laws.

Given at our court at Buckingham Palace, this ninth day of March, in the year of our Lord one thousand eight hundred and fifty-four, and in the seventeenth year of our reign.

God save the Queen.

III.—*Declaration of Her Majesty.*

It is with deep regret that her Majesty announces the failure of her anxious and protracted endeavours to preserve for her people and for Europe the blessings of peace.

The unprovoked aggression of the Emperor of Russia against the Sublime Porte, has been persisted in with such disregard of consequences, that after the rejection by the Emperor of Russia of terms which the Emperor of Austria, the Emperor of the French, and the King of Prussia, as well as her Majesty, considered just and equitable, her Majesty is compelled, by a sense of what is due to the honour of her crown, to the interests of her people, and to the independence of the states of Europe, to come forward in defence of an ally, whose territory is invaded and whose dignity and independence are assailed.

Her Majesty, in justification of the course she is about to pursue, refers to the transactions in which her Majesty has been engaged.

The Emperor of Russia had some cause of complaint against the Sultan with reference to the settlement, which his Highness had sanctioned, of the conflicting claims of the Greek and Latin churches to a portion of the holy places of Jerusalem and its neighbourhood. To the complaint of the Emperor of Russia on this head, justice was done; and her Majesty's ambassador at Constantinople had the satisfaction of promoting an arrangement, to which no exception was taken by the Russian Government.

But while the Russian Government repeatedly assured the government of her Majesty, that the mission of Prince Menchikoff to Constantinople was exclusively directed to

28th March,
1854.
Her Majesty's
declaration of
the causes of
war.

the settlement of the question of the holy places at Jerusalem, Prince Menchikoff himself pressed upon the Porte other demands of a far more serious and important character, the nature of which, he in the first instance endeavoured, as far as possible, to conceal from her Majesty's ambassador. And these demands, thus studiously concealed, affected not the privileges of the Greek church at Jerusalem, but the position of many millions of Turkish subjects, in their relations to their sovereign the Sultan.

These demands were rejected by the spontaneous decision of the Sublime Porte.

Two assurances had been given to her Majesty; one, that the mission of Prince Menchikoff only regarded the holy places; the other, that his mission would be of a conciliatory character.

In both respects, her Majesty's just expectations were disappointed.

Demands were made, which in the opinion of the Sultan, extended to the substitution of the Emperor of Russia's authority for his own, over a large portion of his subjects; and those demands were enforced by a threat; and when her Majesty learnt that, on announcing the termination of his mission, Prince Menchikoff declared that the refusal of his demands would impose upon the imperial government, the necessity of seeking a guarantee by its own power, her Majesty thought proper that her fleet should leave Malta, and, in co-operation with that of his Majesty the Emperor of the French, take up its station in the neighbourhood of the Dardanelles.

So long as the negotiation bore an amicable character, her Majesty refrained from any demonstration of force. But when, in addition to the assemblage of large military forces on the frontier of Turkey, the ambassador of Russia intimated that serious consequences would ensue from the refusal of the Sultan to comply with unwarrantable demands, her Majesty deemed it right, in conjunction with the Emperor of the French, to give an unquestionable proof of her determination to support the sovereign rights of the Sultan.

The Russian Government has maintained that the determination of the Emperor to occupy the Principalities, was taken in consequence of the advance of the fleets of England and France. But the menace of invasion of the Turkish territory was conveyed in Count Nesselrode's note to Redschid Pacha, of the $\frac{1}{2}$ May, and re-stated in his despatch to Baron Brunnow, of the 20th May [1st June], which announced the determination of the Emperor of Russia to order his troops to occupy the Principalities, if the Porte did not within a week comply with the demands of Russia.

The despatch to Her Majesty's ambassador, at Constantinople, authorizing him in certain specified contingencies, to send for the British fleet, was dated the 31st May, and the order sent direct from England to Her Majesty's admiral, to proceed to the neighbourhood of the Dardanelles, was dated the 2nd of June.

The determination to occupy the Principalities was therefore taken before the orders for the advance of the combined squadrons were given.

The Sultan's minister was informed, that unless he signed within a week, and without the change of a word, the note proposed to the Porte by Prince Menchikoff, on the eve of his departure from Constantinople, the Principalities of Moldavia and Wallachia would be occupied by Russian troops. The Sultan could not accede to so insulting a demand; but when the actual occupation of the Principalities took place, the Sultan did not, as he might have done, in the exercise of his undoubted right, declare war, but addressed a protest to his allies.

Her Majesty, in conjunction with the sovereigns of Austria, France, and Prussia, has made various attempts to meet any just demands of the Emperor of Russia, without affecting the dignity and independence of the Sultan; and had it been the sole object of Russia to obtain security for the enjoyment, by the Christian subjects of the Porte of their privileges and immunities, she would have found it in the offers that have been made by the Sultan. But as that security was not offered in the shape of a special and separate stipulation with Russia, it was rejected. Twice has this offer been made by the Sultan, and recommended by the four powers, once by a note originally prepared at Vienna, and subsequently modified by the Porte, once by the proposal of bases of negotiation agreed upon at Constantinople on the 31st of December, and approved at Vienna on the 13th of January, as offering to the two parties the means of arriving at an understanding in a becoming and honourable manner.

It is thus manifest that a right for Russia, to interfere in the ordinary relations of Turkish subjects to their sovereign, and not the happiness of Christian communities in Turkey, was the object sought for by the Russian government; to such a demand the Sultan would not submit, and his Highness, in self-defence, declared war upon Russia; but her Majesty nevertheless, in conjunction with her allies, has not ceased her endeavours, to restore peace between the contending parties.

The time has, however, now arrived, when the advice and remonstrances of the four powers having proved wholly ineffectual, and the military preparations of Russia becoming

daily more extended, it is but too obvious that the Emperor of Russia has entered upon a course of policy which, if unchecked, must lead to the destruction of the Ottoman empire.

In this conjuncture, Her Majesty feels called upon by regard for an ally, the integrity and independence of whose empire have been recognised as essential to the peace of Europe, by the sympathies of her people with right against wrong, by a desire to avert from her dominions most injurious consequences, and to save Europe from the preponderance of a power which has violated the faith of treaties, and defies the opinion of the civilised world, to take up arms, in conjunction with the Emperor of the French, for the defence of the Sultan.

Her Majesty is persuaded that in so acting she will have the cordial support of her people; and that the pretext of zeal for the Christian religion will be used in vain to cover an aggression undertaken in disregard of its holy precepts and of its pure and beneficent spirit.

Her Majesty humbly trusts that her efforts may be successful, and that, by the blessing of Providence, peace may be re-established on safe and solid foundations.

Westminster, March 28, 1854.

IV.—*Declaration of Her Majesty with reference to Neutrals and Letters of Marque.*

28th March,
1854.
Her Majesty's
declaration
with reference
to neutrals
and letters of
marque.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in support of an ally, is desirous of rendering the war as little onerous as possible to the powers with whom she remains at peace.

To preserve the commerce of neutrals from all unnecessary obstruction, her Majesty is willing, for the present, to waive a part of the belligerent rights appertaining to her by the law of nations.

It is impossible for her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing neutrals from bearing the enemy's despatches, and she must maintain the right of a belligerent to prevent neutrals from breaking any effective blockade which may be

established with an adequate force against the enemy's forts, harbours, or coasts.

But her Majesty will waive the right of seizing enemy's property laden on board a neutral vessel, unless it be contraband of war.

It is not her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board enemy's ships; and her Majesty further declares, that being anxious to lessen as much as possible the evils of war, and to restrict its operations to the regularly organized forces of the country, it is not her present intention to issue letters of marque for the commissioning of privateers.

Westminster, March 28, 1854.

V.—*At the Court at Buckingham Palace, the 29th day of March, 1854. Present, the Queen's most Excellent Majesty in Council.*

Her Majesty having determined to afford active assistance to her ally, his Highness the Sultan of the Ottoman empire, for the protection of his dominions against the encroachments and unprovoked aggression of his imperial Majesty the Emperor of all the Russias, her Majesty therefore is pleased, by and with the advice of her privy council, to order, and it is hereby ordered, that general reprisals be granted against the ships, vessels, and goods of the Emperor of all the Russias, and of his subjects or others inhabiting within any of his countries, territories, or dominions, so that her Majesty's fleets and ships shall and may lawfully seize all ships, vessels, and goods belonging to the Emperor of all the Russias, or his subjects, or others inhabiting within any of his countries, territories, or dominions, and bring the same to judgment in such Courts of Admiralty within her Majesty's dominions, possessions, or colonies as shall be duly commissioned to take cognizance thereof. And to that end her Majesty's Advocate General, with the Advocate of her Majesty in her office of Admiralty, are forthwith to prepare the draft of a commission, and present the same to her Majesty at this Board, authorizing the commissioners for executing the office of Lord High Admiral to will and require the High Court of Admiralty of England, and the lieutenant

29th March,
1854.
Order in
Council
granting
general repri-
sals against
Russia.

and judge of the said Court, his surrogate or surrogates, as also the several Courts of Admiralty within her Majesty's dominions which shall be duly commissioned, to take cognizance of, and judicially proceed upon, all and all manner of captures, seizures, prizes, and reprisals of all ships, vessels, and goods that are or shall be taken, and to hear and determine the same; and, according to the course of Admiralty and the law of nations, to adjudge and condemn all such ships, vessels, and goods, as shall belong to the Emperor of all the Russias, or his subjects, or to any others inhabiting within any of his countries, territories, or dominions; and they are likewise to prepare and lay before her Majesty, at this Board, a draft of such instructions as may be proper to be sent to the said several Courts of Admiralty in her Majesty's dominions, possessions, and colonies, for their guidance herein.

From the Court at Buckingham Palace, this twenty-ninth day of March, one thousand eight hundred and fifty-four.

CRANWORTH, C.	DRUMLANRIG.
GRANVILLE, P.	MULGRAVE.
ARGYLL, C. P. S.	J. RUSSELL.
NEWCASTLE.	ERNEST BRUCE.
BREADALBANE.	SIDNEY HERBERT.
LANDSLOWNE.	J. R. G. GRAHAM.
ABERCORN.	STEPHEN LUSHINGTON.
ABERDEEN.	W. E. GLADSTONE.
CLARENDON.	WILLIAM MOLESWORTH.

VI.—*At the Court at Buckingham Palace, the 29th day of March, 1854. Present, the Queen's most Excellent Majesty in Council.*

29th March,
1854.
Order in
Council for
preventing
vessels clear-
ing out for
Russia, and
ordering a
general em-
bargo or stop
of Russian
vessels.

It is this day ordered by her Majesty, by and with the advice of her Privy Council, that no ships or vessels belonging to any of Her Majesty's subjects be permitted to enter and clear out for any of the ports of Russia, until further order; and her Majesty is further pleased to order, that a general embargo or stop be made of all Russian ships and vessels whatsoever, now within or which shall hereafter come into any of the ports, harbours, or roads within any of her Majesty's dominions, together with all persons and effects on board the said ships or vessels: Provided always, that

nothing herein contained shall extend to any ships or vessels specified or comprised in a certain order of her Majesty in council, dated this twenty-ninth day of March, for exempting from capture or detention Russian vessels under special circumstances; and her Majesty is pleased further to order, and it is hereby ordered, that the utmost care be taken for the preservation of all and every part of the cargoes on board any of the said ships or vessels, so that no damage or embezzlement whatever be sustained.

And the Right Honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

VII.—*At the Court at Buckingham Palace, the 29th day of March, 1854. Present, the Queen's most Excellent Majesty in Council.*

Her Majesty, being compelled to declare war against his imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels, in any ports or places within her Majesty's dominions, shall be allowed until the tenth day of May next, six weeks from the date hereof, for loading their cargoes and departing from such ports or places; and that such Russian merchant vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage, if on examination of their papers it shall appear that their cargoes were taken on board before the expiration of the above term: Provided, that nothing herein contained shall extend or be taken to extend to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian government.

And it is hereby further ordered by her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the date of this

29th March, 1854.
Order in Council for exempting from capture or detention Russian vessels under special circumstances.

order, shall have sailed from any foreign port bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation, and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

And the Right Honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the Cinque Ports, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

VIII.—*By the Queen. A Proclamation.*

VICTORIA, R.

29th March,
1854.
Proclamation
regulating the
distribution of
captures made
by H. M.'s
fleets, &c.
acting with
any allied
fleet, &c.

Whereas, by our order in council bearing date the twenty-ninth day of March one thousand eight hundred and fifty-four. We have ordered that general reprisals be granted against the ships, goods, and subjects of the Emperor of all the Russias, his subjects or others inhabiting within any of his countries, territories, or dominions, (save and except any vessels to which our licence has been or may be granted, or which have been directed to be released from the embargo, and have not since arrived at any foreign port,) so that our fleets and ships shall and may lawfully seize all ships, vessels, and goods belonging to the Emperor of all the Russias, or his subjects, or others inhabiting within any of his countries, territories, or dominions, and bring the same to judgment in any of the Courts of Admiralty within our dominions duly authorized and required to take cognizance thereof, we do hereby order and direct that the net produce of all such prizes taken by any of our ships or vessels of war, (save and except when they shall be acting on any conjunct expedition with our army, in which case we reserve to ourselves the division and distribution of all prize and booty taken, and also save and except as hereinafter mentioned,) shall be for the entire benefit and encouragement of our flag officers, captains, commanders, and other commissioned offi-

cers in our pay, and of all subordinate, warrant, petty, and non-commissioned officers, and of the seamen, marines, and soldiers on board our said ships and vessels at the time of the capture, after the same shall have been to us finally adjudged lawful prize.

Whenever any prize shall be taken by any of our fleets, squadrons, ships, or vessels of war whilst acting in conjunction with any fleets, squadrons, ships, or vessels of war belonging to any other power or powers in alliance with us, our High Court of Admiralty, or the Vice Admiralty Court within our dominions adjudicating thereon, shall apportion to such ally or allies a share or shares of the proceeds of such prize or prizes proportionate to the number of officers and men, &c., present and employed on the part of such ally or allies as compared with the number of officers and men, &c., present and employed on our behalf in such capture or captures, without reference to their respective ranks, and the share or shares so set apart for such ally or allies shall be transmitted to such persons as may be duly authorized on behalf of such ally or allies to receive the same.

Ships or vessels, being in sight of the prize, as also of the captor, under circumstances to cause intimidation to the enemy and encouragement to the captor, shall be alone entitled to share as joint captors.

After having deducted the portion set apart as aforesaid for our allies, a distribution, so far as regards her Majesty's forces, shall be as follows:—the flag officer or officers shall have one-twentieth part of the whole net proceeds arising from prizes captured from the enemy by any of the ships or vessels under his or their command, and of the rewards conferred for the same, according to the following conditions and modifications, save and except as hereinafter provided and directed; that is to say,

When there is but one flag officer he shall have the entire one-twentieth part; when two flag officers shall be sharing together, the chief shall have two-thirds, and the other flag officer shall have the remaining one-third of the one-twentieth part; and when there shall be more than two flag officers, the chief shall have one-half of the said one-twentieth part, and the remaining half shall be equally divided among the junior flag officers; commodores of the first class and captains of the fleet to share as flag officers: provided always, that no flag officer, unless actually on board any of our ships or vessels of war, and at the actual taking, sinking, burning, or otherwise destroying any ship or ships of war, privateer or privateers, belonging to the enemy, shall share in the distribution of any head money or bounty

money granted as a reward for taking, sinking, burning, or otherwise destroying any such ship or vessel of the enemy.

That no flag officer commanding in any port in the United Kingdom shall share in the proceeds of any prize captured from the enemy by any ship or vessel which shall sail from or leave such port by order of the Lord High Admiral, or of our commissioners for executing the office of Lord High Admiral.

That when ships or vessels under the command of several flag officers belonging to separate stations shall be joint captors, each flag officer shall receive a proportion of the one-twentieth part, according to the number of officers and men present under the command of each such flag officer; and when any ship or vessel under orders from the Lord High Admiral, or from our commissioners for executing the office of Lord High Admiral, are joint captors with other ships or vessels under a flag or flags, the like regulations as to the apportionment of the flag share to the flag officer or officers are to be observed.

With reference to flag officers, it is to be noted,

That when an inferior flag officer is sent to reinforce a superior officer on any station, the superior flag officer shall not share in any prize taken by the inferior flag officer before he has arrived within the limits of that station, unless the inferior officer shall have received some order directly from and shall be acting in execution of some order issued by such superior flag officer.

No chief flag officer quitting any station, except upon some definite urgent service, and with the intention of returning to the station as soon as such service is performed, shall share in any prize taken by our ships or vessels left behind after he has passed the limits of the station, or after he has surrendered the command to another flag officer appointed by the Admiralty to command in chief upon such station.

An inferior flag officer quitting any station (except when detached by orders from his commander-in-chief upon a special service, accompanied with orders to return to such station as soon as the service has been performed) shall have no share in prizes taken by the ships and vessels remaining on the station after he has passed the thereof.

In like manner flag officers remaining on such station shall not share in the prizes taken by such inferior officer, or by ships or vessels under his immediate command, after he has quitted the limits of the station, except he has been detached as aforesaid.

A commander-in-chief or other flag officer belonging to any station shall not share in any prize or prizes taken out of the limits of that station by any ship or vessel under the command of a flag officer of any other station, or under orders from our commissioners of the Admiralty, unless such commander-in-chief or flag officer is expressly authorized by our said commissioners to take the command of that station in which the prize or prizes is or are taken, and shall actually have taken upon him such command.

Every commodore having a captain under him shall be esteemed a flag officer with respect to the twentieth part of prizes taken, whether he be commanding in chief or serving under command.

The first captain to the admiral and commander-in-chief of our fleet, and also the first captain to any flag officer appointed to command a fleet of ten ships of the line or upward, shall be deemed to be a flag officer for the purposes of sharing in prize, and shall be entitled to share therein as the junior flag officer of such fleet.

Any officer on board any of our ships of war at the time of capturing any prize or prizes who shall have more commissions than one shall be entitled only to share in such prize or prizes according to the share allotted to him by the above-mentioned distribution in respect to his superior commission or office.

And with reference to other officers it is to be noted, that a captain, commander, or other commanding officer of a ship or vessel, shall be deemed to be under the command of a flag when he shall have received some order from, or be acting in the execution of some order issued by, a flag officer, whether he be or be not within the limits of the station of such flag officer; and in the event of his being directed to join a flag officer on any station, he shall be deemed to be under the command of such flag officer from the time when he arrives within the limits of the station, which circumstance is always to be carefully noted in the log book; and it shall be considered that he continues under the flag officer of such station until he shall have received some order directly from, or be acting in the execution of some order issued by, some other flag officer, duly authorized, or by the Lord High Admiral, or our commissioners for executing the office of Lord High Admiral.

And we hereby direct, That the captain, commander, lieutenant commanding, master commanding, or any other officer duly commanding any ship, sloop, or vessel of war singly taking any prize from the enemy, that is to say, the officer actually in command at the time, shall have one-eighth

of the remainder, or if there is no flag one-eighth of the entire net proceeds, except that if the single capturing ship be a rated ship having a commander under the captain the commander shall take a portion of the one-eighth part as if he were commander of a sloop, according to the proportion hereinafter set forth; and if more than one commanding officer of the same rank of command shall be entitled to share as joint captors, the one-eighth shall be equally divided between them; but when captains, commanders, lieutenants commanding, and masters commanding, respectively, our ships and vessels of war, and commanders under captains in rated ships, shall share together, in whatever variety of combination, the one-eighth shall be so divided into parts for a gradual apportionment as to provide for each captain receiving six parts; each commander of a sloop, or commander under a captain in a rated ship, three parts; and each lieutenant commanding, or master commanding, or officer actually commanding a small vessel of war, two parts; which we hereby direct shall be the proportion in which they shall respectively share; commodores of the second class, and field officers of marines or of land forces serving as marines, doing duty as field officers, above the rank of major, to share as captains, and field officers of marines or of land forces serving as marines, and doing duty in the rank of major, to share as commanders of sloops.

And we further direct, That after provision shall thus have been made for the flag share (if any), and for the portion of the commanding officer or officers and others as above specified, the remainder of the net proceeds shall be distributed in ten classes, so that each officer, man, and boy composing the rest of the complements of our ships, sloops, and vessels of war, and actually on board at the time of any such capture, and every person present and assisting, shall receive shares or a share according to his class, as set forth in the following scale:—

First class: Master of the fleet, inspector of steam machinery afloat when embarked with a fleet, medical inspector or deputy medical inspector when embarked with a fleet, forty-five shares each.

Second class: Senior lieutenant of a rated ship, not bearing a commander under the captain, secretary to the admiral of the fleet or admiral commanding in chief, thirty-five shares each.

Third class: Sea lieutenant, master, captain of marines, of marine artillery, or of land forces doing duty as marines, whether having high brevet rank or not, secretary to an admiral or to a commodore of the first class not commanding in chief, chief engineer, twenty-eight shares each.

Fourth class: Lieutenant or quarter master of marines, lieutenant of marine artillery, lieutenant, quarter master or ensign of land forces doing duty as marines, secretary to a commodore of the second class, chaplain, surgeon, paymaster, naval instructor, mate, assistant surgeon, second master, clerk in charge, passed clerk, assistant engineer, gunner, boatswain, carpenter, eighteen shares each.

Fifth class: Midshipman, master's assistant, pilot, clerk (not passed), master-at-arms, chief gunner's mate, chief boatswain's mate, chief carpenter's mate, chief captain of the forecastle, admiral's coxswain, chief quarter master, seamen's schoolmaster, ship's steward, ship's cook, ten shares each.

Sixth class: Naval cadet, clerk's assistant, captain's coxswain, ship's corporal, quarter master, gunner's mate, boatswain's mate, captain of the forecastle, captain of the afterguard, captain of the hold, captain of the main top, captain of the fore top, coxswain of the launch, sailmaker, ropemaker, caulker, leading stoker, blacksmith, serjeant of marines, of marine artillery, or of land forces doing duty as marines, nine shares each.

Seventh class: Captain of the mast, captain of the mizen top, yeoman of the signals, coxswain of the barge, coxswain of the pinnace, coxswain of the cutter, second captain of the forecastle, second captain of the main top, second captain of the fore top, second captain of the afterguard, sailmaker's mate, caulker's mate, musician, cooper, armourer, corporal of marines or of land forces doing duty as marines, bombardier of marine artillery, head krooman, six shares each.

Eighth class: Leading seamen, shipwright, second captain of the hold, able seamen, carpenter's crew, sailmaker's crew, cooper's crew, armourer's crew, yeoman of the store rooms, steward's assistant, ordinary seaman, blacksmith's mate, private and fifer of marines or of land forces doing duty as marines, gunner of marine artillery, painter, stoker, coal trimmer, second head krooman, sick berth attendant, bandsman, tailor, butcher, three shares each.

Ninth class: Cook's mate, ship's steward's boy, admiral's domestic, superintendent's domestic, admiral's steward and cook, captain's steward and cook, ward room and gun room steward and cook, subordinate officers' steward and cook, commander's servant, secretary's servant, second class ordinary seamen, assistant stoker, barber, boy of the first class, first and second class krooman, supernumeraries, except as hereinafter provided,

persons borne merely as passengers and not declining to render assistance on occasion of capture, two shares each.

Tenth class : boy below first class, one share.

All supernumeraries holding ranks in the service above the ranks or ratings specified in the fifth class of this our proclamation who have been ordered to do duty in any of our ships or vessels by the Lord High Admiral, or by our commissioners for executing the office of Lord High Admiral, by the senior officer of the fleet or squadron, or if none senior then by the captain or commanding officer of the capturing ship or vessel, if not by special authority employed in higher capacities, shall share according to the rank which they respectively hold in the service ; but in all cases, to qualify them for so sharing, and not merely as supernumeraries in the ninth class, due notation of their being thus respectively ordered to do duty must have been made on the muster books.

And with respect to supernumeraries of ratings in the service below the denominations of those specified in the fourth class of this our proclamation, and who at full victuals are engaged in the ordinary duties of the ship, it is our will and pleasure that they shall always share according to the ratings which they bear in the service.

And in order that our royal intentions herein may be duly carried into effect, we further direct, that when any capture is made from the enemy, the captains or commanding officers of our ships or vessels of war making the same shall transmit or cause to be transmitted, as soon as may be, to the Secretary to the Admiralty, a true and perfect list of all the officers, seamen and marines, soldiers, and others, who were actually on board on the occasion, accompanied by a separate list containing the names of those belonging to the crew who were absent on duty or otherwise at the time, specifying the cause of such absence, each list to contain the quality of the service of each person, together with the respective descriptions of men taken from the description book of the ship or vessel, and their several ratings, to be subscribed by the captain or commanding officer, and three or four more of the chief officers on board.

And when the list of those actually on board, and the separate list of persons absent though belonging to the ship or vessel, shall have been verified on examination with the muster books lodged as official records, the Accountant General of our navy shall, upon request, grant to the agent or agents nominated or appointed by the captors, a certificate that such lists are correct or have been corrected as occasion may require, in order that distribution of the prize or other proceeds may be duly made.

And in the event of difficulty arising with respect to any of the regulations hereby ordered, or if any case should occur not herein provided for, or not sufficiently provided for, we are pleased hereby to authorize the Lord High Admiral, or our commissioners for executing the office of Lord High Admiral for the time being, to issue such directions thereupon as may appear just and expedient; which directions shall have the same force and effect as if specially provided for in this our royal proclamation.

Given at our Court at Buckingham Palace, this twentieth day of March in the year of our Lord one thousand eight hundred and fifty-four, and in the seventeenth year of our Reign.

God save the Queen.

IX. *At the Court at Buckingham Palace, the 7th day of April, 1854. Present, the Queen's most Excellent Majesty in Council.*

Her Majesty being compelled to declare war against his Imperial Majesty the Emperor of all the Russias, and being desirous to lessen as much as possible the evils thereof, is pleased, by and with the advice and consent of her Privy Council, to order, and it is hereby ordered, that Russian merchant vessels which, at the time of the publication of this order, shall be in any ports or places in her Majesty's Indian territories under the government of the East India Company, or within any of her Majesty's foreign or colonial possessions, shall be allowed thirty days from the time of the publication of this order in such Indian territories, or foreign and colonial possession, for loading their cargoes and departing from such ports or places; and that such Russian merchant vessels, if met at sea by any of her Majesty's ships, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; provided that nothing herein contained shall extend, or be taken to extend, to Russian vessels having on board any officer in the military or naval service of the enemy, or any article prohibited or contraband of war, or any despatch of or to the Russian government.

7th April,
1854.
Order in
Council extending to
India and the colonies the
indulgence granted to
Russian vessels by her
Majesty's
Order in
Council of
29th March,
1854.

And it is hereby further ordered by her Majesty, by and with the advice of her Privy Council as aforesaid, that any Russian merchant vessel which, prior to the twenty-ninth day of March now last past, shall have sailed from any foreign port, bound for any port or place in any of her Majesty's Indian territories, or foreign or colonial possessions, shall be permitted to enter such port or place, and to discharge her cargo, and afterwards forthwith to depart without molestation; and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

And the Right Honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, and her Majesty's Principal Secretary of State for War and the Colonies, the Right Honourable the Commissioners for the Affairs of India, and all governors, officers, and authorities whom it may concern, in her Majesty's East Indian, foreign, and colonial possessions, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

X. *At the Court at Buckingham Palace the 7th day of April, 1854. Present, the Queen's most Excellent Majesty in Council.*

7th April,
1854.
Order in
Council for
preventing
vessels clear-
ing out for
Russia, and
ordering a
general em-
bargo or stop
of Russian
ships in the
Channel
Islands and
the Isle of
Man.

It is this day ordered by her Majesty, by and with the advice of her Privy Council, that no ships or vessels belonging to any of her Majesty's subjects be permitted to enter and clear out for any of the ports of Russia until further order; and her Majesty is further pleased to order, that a general embargo or stop be made of all Russian ships and vessels whatsoever now within or which shall hereafter come into any of the ports, harbours, or roads, within her Majesty's islands of Jersey, Guernsey, Alderney, and Sark, and the Isle of Man, together with all persons and effects on board the said ships or vessels: Provided always, that nothing herein contained shall extend to any ships or vessels specified or comprised in a certain order of her Majesty in Council, dated the twenty-ninth day of March last, for exempting from capture or detention Russian vessels under

special circumstances; and her Majesty is pleased further to order, and it is hereby ordered, that the utmost care be taken for the preservation of all and every part of the cargoes on board any of the said ships or vessels, so that no damage or embezzlement whatever be sustained.

And the lieutenant-governors of her Majesty's islands of Jersey, Guernsey, Alderney, and Sark, and of the Isle of Man, for the time being, are to give the necessary directions herein as to them may respectively appertain, and to return an account of their proceedings to this Board.

C. C. GREVILLE.

XI.—*At the Council Chamber, Whitehall, the 11th day of April, 1854. By the Lords of Her Majesty's most Honourable Privy Council.*

The Lords of the Council having taken into consideration certain applications for leave to export arms, ammunition, military and naval stores, &c., being articles of which the exportation is prohibited by her Majesty's proclamation of February 18th, 1854: their Lordships are pleased to order, and it is hereby ordered, that permission should be granted by the Lords Commissioners of her Majesty's Treasury, to export the articles so prohibited, to be carried coastwise to ports in the United Kingdom, and likewise to all places in North and South America, except the Russian possessions in North America; to the coast of Africa, west of the straits of Gibraltar, and round the south and east coast of Africa; to the whole coast of Asia, not within the Mediterranean sea or the Persian gulf, and not being part of the Russian territories; to the whole of Australia, and to all British colonies within the limits aforesaid, upon taking a bond from the persons exporting such prohibited articles that they shall be landed and entered at the port of destination; and that all further permission to export such articles to other parts of the world, be only granted upon application to the Lords of the Council at this board.

11th April,
1854.
Order of the
Lords of the
Council respecting permission to export contraband of war.

C. C. GREVILLE.

*XII.—At the Court at Windsor, the 15th day of April, 1854.
Present, the Queen's most Excellent Majesty in Council.*

15th April,
1854.
Order in
Council in
furtherance of
her Majesty's
declaration of
the 28th
March, 1854,
respecting the
trade of
neutrals and
British sub-
jects.

Whereas Her Majesty was graciously pleased, on the 28th day of March last, to issue her royal declaration in the following terms:—

“Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, having been compelled to take up arms in support of an ally, is desirous of rendering the war as little onerous as possible to the powers, with whom she remains at peace.

“To preserve the commerce of neutrals from all unnecessary obstruction, her Majesty is willing for the present, to waive a part of the belligerent rights appertaining to her by the law of nations.

“It is impossible for her Majesty to forego the exercise of her right of seizing articles contraband of war, and of preventing neutrals from bearing the enemy's despatches, and she must maintain the right of a belligerent, to prevent neutrals from breaking any effective blockade, which may be established with an adequate force against the enemy's forts, harbours, or coasts.

“But her Majesty will waive the right of seizing enemy's property, laden on board a neutral vessel, unless it be contraband of war.

“It is not her Majesty's intention to claim the confiscation of neutral property, not being contraband of war, found on board enemy's ships; and her Majesty further declares, that being anxious to lessen as much as possible, the evils of war, and to restrict its operations to the regularly organized forces of the country; it is not her present intention to issue letters of marque for the commissioning of privateers.”

Now it is this day ordered, by and with the advice of her privy council, that all vessels under a neutral or friendly flag, being neutral or friendly property, shall be permitted to import into any port or place in her Majesty's dominions, all goods and merchandise whatsoever, to whomsoever the same may belong; and to export from any port or place in her Majesty's dominions, to any port not blockaded, any cargo or goods not being contraband of war, or not requiring a special permission, to whomsoever the same may belong.

And her Majesty is further pleased, by and with the advice of her privy council to order; and it is hereby further ordered, that, save and except only as aforesaid, all the subjects of her Majesty and the subjects or citizens of any

neutral or friendly state, shall and may, during and notwithstanding the present hostilities with Russia, freely trade with all ports and places wheresoever situate, which shall not be in a state of blockade, save and except that no British vessel, shall under any circumstances whatsoever, either under or by virtue of this order or otherwise, be permitted or empowered to enter or communicate with any port or place, which shall belong to, or be in the possession, or occupation of her Majesty's enemies.

And the right honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, the Lord Warden of the cinque ports, and her Majesty's principal secretary of state for war and the colonies, are to give the necessary directions herein as to them may respectively appertain.

C. C. GREVILLE.

XIII.—*At the Court at Windsor, the 15th day of April, 1854.
Present, the Queen's most Excellent Majesty in Council.*

Whereas by an order of her Majesty in council, of the 29th of March last, it was amongst other things ordered, "that any Russian merchant vessel, which prior to the date of this order, shall have sailed from any foreign port, bound for any port or place in her Majesty's dominions, shall be permitted to enter such port or place and to discharge her cargo, and afterwards forthwith to depart without molestation; and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded:"

And whereas her Majesty, by and with the advice of her said council, is now pleased to alter and extend such part of the said order: It is hereby ordered, by and with such advice as aforesaid, as follows; that is to say, That any Russian merchant vessel, which prior to the fifteenth day of May, one thousand eight hundred and fifty-four, shall have sailed from any port of Russia, situated either in or upon the shores or coasts of the Baltic Sea, or of the White Sea, bound for any port or place in her Majesty's dominions, shall be permitted to enter such last-mentioned port or place, and to discharge her cargo, and afterwards forthwith to depart

15th April,
1854.
Order in
Council to
extend to the
15th May,
1854,
the indulgence
granted to
Russian
vessels which
shall have
sailed from a
Russian port
in the Baltic
or White Sea
prior to that
date.

without molestation; and that any such vessel, if met at sea by any of her Majesty's ships, shall be permitted to continue her voyage to any port not blockaded.

And her Majesty is pleased, by and with the advice aforesaid, further to order, and it is hereby further ordered, that in all other respects, her Majesty's aforesaid order in council, of the twenty-ninth day of March last, shall be and remain in full force, effect, and operation.

And the right honourable the Lords Commissioners of her Majesty's Treasury, the Lords Commissioners of the Admiralty, and the Lord Warden of the cinque ports, are to give the necessary directions herein, as to them may respectively appertain.

C. C. GREVILLE.

XIV.—*At the Court at Windsor, the 15th day of April, 1854.
Present, the Queen's most Excellent Majesty in Council.*

15th April,
1854.
Orders to
prohibit the
exportation of
arms, &c.
from Malta
and Gibraltar
without
license.

Whereas it has appeared expedient and necessary to her Majesty, by and with the advice of her privy council, by reason of the hostilities now subsisting between herself and his imperial Majesty the Emperor of all the Russias, to prohibit the goods hereinafter mentioned to be exported from the island of Malta and its dependencies, except as hereinafter provided:

Her Majesty is pleased, by and with the advice of her privy council aforesaid, to order, and it is hereby ordered, that from and after the publication of this order in the said island, all arms, ammunition, and gunpowder, military and naval stores, and the following articles, being articles deemed capable of being converted into, or made useful in increasing the quantity of military or naval stores; that is to say, marine engines, screw propellers, paddle wheels, cylinders, cranks, shafts, boilers, tubes for boilers, boiler plates, fire-bars, and every article, or any other component part of an engine or boiler, or any article whatsoever, which is, can, or may become applicable for the manufacture of marine machinery, shall be, and the same are hereby prohibited to be exported from the said island of Malta and its dependencies, except with the license of the governor or

other officer, administering the government thereof for that purpose first had and obtained.

And the most noble the Duke of Newcastle, one of her Majesty's principal secretaries of state, is to give the necessary directions herein accordingly.

C. C. GREVILLE.

An order, similar to the above was issued, prohibiting the exportation of arms, &c., from the "Town and Garrison of Gibraltar."

(C.)

CONVENTION BETWEEN HER MAJESTY AND THE EMPEROR
OF THE FRENCH, RELATIVE TO JOINT CAPTURES. SIGNED
AT LONDON, MAY 10, 1854.

[*Ratifications exchanged at London, May 20, 1854.*]

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and his Majesty the Emperor of the French, being desirous to determine the jurisdiction to which the adjudication of joint captures which may be made during the course of the present war by the naval forces of the two nations, shall belong, or of captures which may be made of merchant vessels belonging to subjects of either of the two countries by the cruisers of the other, and being desirous to regulate at the same time the mode of distribution of the proceeds of joint captures, have named as their Plenipotentiaries for that purpose, that is to say :

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, the Right Honourable George William Frederick, Earl of Clarendon, Baron Hyde of Hindon, a Peer of the United Kingdom, a Member of Her Britannic Majesty's Most Honourable Privy Council, Knight of the Most Noble Order of the Garter, Knight Grand Cross of the Most Honourable Order of the Bath, Her Britannic Majesty's Principal Secretary of State for Foreign Affairs ;

And His Majesty the Emperor of the French, the Sieur Alexander Colonna, Count Walewski, Grand Officer of the

Imperial Order of the Legion of Honour, Grand Cross of the Order of St. Januarius of the Two Sicilies, Grand Cross of the Order of Danebrog of Denmark, Grand Cross of the Order of Merit of St. Joseph of Tuscany, &c., &c., His Ambassador to Her Britannic Majesty;

Who, after having exchanged their full powers, found in due form, have agreed upon the following articles:

ART. I. When a joint capture shall be made by the naval forces of the two countries, the adjudication thereof shall belong to the jurisdiction of the country whose flag shall have been borne by the officer having the superior command in the action.

ART. II. When a capture shall be made by a cruiser of either of the two allied nations in the presence and in the sight of a cruiser of the other, such cruiser having thus contributed to the intimidation of the enemy and encouragement of the captor, the adjudication thereof shall belong to the jurisdiction of the actual captor.

ART. III. In case of the capture of a merchant vessel of one of the two countries, the adjudication of such capture shall always belong to the jurisdiction of the country of the captured vessel: the cargo shall be dealt with, as to the jurisdiction, in the same manner as the vessel.

ART. IV. In case of condemnation under the circumstances described in the preceding Articles:

1. If the capture shall have been made by vessels of the two nations whilst acting in conjunction, the net proceeds of the prize, after deducting the necessary expenses, shall be divided into as many shares as there were men on board the capturing vessels, without reference to rank, and the shares belonging to the men on board the vessels of the ally shall be paid and delivered to such person as may be duly authorized on behalf of the allied government to receive the same; and the distribution of the amount belonging to each vessel shall be made by each government according to the laws and regulations of the country.

2. If the capture shall have been made by cruisers of either of the two allied nations in the presence and in sight of a cruiser of the other, the division, the payment, and the distribution of the net proceeds of the prize, after deducting the necessary expenses, shall likewise be made in the manner above mentioned.

3. If a capture, made by a cruiser of one of the two countries, shall have been adjudicated by the Courts of the other, the net proceeds of the prize, after deducting the necessary expenses, shall be made over in the same manner to the government of the captor, to be distributed according to its laws and regulations.

ART. V. The commanders of the vessels of war of their Majesties shall, with regard to the sending in and delivering up of prizes, conform to the Instructions annexed to the present Convention, and which the two governments reserve to themselves to modify by common consent, if it should become necessary.

ART. VI. When, in execution of the present Convention, the valuation of a captured vessel of war shall be in question, the calculation shall be according to the real value of the same; and the allied government shall be entitled to delegate one or more competent officers to concur in the valuation. In case of disagreement, it shall be decided by lot which officer shall have the casting voice.

ART. VII. The crews of the captured vessels shall be dealt with according to the laws and regulations of the country to which the present Convention attributes the adjudication of the prize.

ART. VIII. The present Convention shall be ratified, and the ratifications shall be exchanged at London within ten days from this date, or sooner if possible.

In witness whereof, the respective Plenipotentiaries have signed the present Convention, and have affixed thereto the seals of their arms.

Done at London, the tenth day of the month of May, in the year of our Lord one thousand eight hundred and fifty-four.

(L.S.)
(L.S.)

CLARENDON.
A. WALEWSKI.

ANNEX TO THE CONVENTION BETWEEN GREAT BRITAIN
AND FRANCE, SIGNED AT LONDON, MAY 10, 1854.

Instructions to the Commanders of Ships of War belonging to Her Majesty the Queen of the United Kingdom of Great Britain and Ireland and to His Majesty the Emperor of the French.

You will find inclosed a copy of a Convention which was signed on the 10th instant between her Majesty the Queen of the United Kingdom of Great Britain and Ireland and his Majesty the Emperor of the French, regulating the

jurisdiction to which shall belong the adjudication of the joint captures made by the allied naval forces, or of the captures of merchant vessels belonging to the subjects of either of the two countries which shall be made by the cruisers of the other, as likewise the mode of distribution of the proceeds of such joint captures.

In order to ensure the execution of this Convention, you will conform yourself to the following Instructions :

ART. I. Whenever, in consequence of a joint action, you are required to draw up the report or *procès-verbal* of a capture, you will take care to specify exactly the names of the ships of war present during the action, as well as the names of their commanding officers, and, as far as possible, the number of men embarked on board those ships at the commencement of the action, without distinction of rank.

You will deliver a copy of that report or *procès-verbal* to the officer of the allied Power who shall have had the superior command during the action, and you will conform yourself to the instructions of that officer as far as relates to the measures to be taken for the conduct and the adjudication of the joint captures so made under his command.

If the action has been commanded by an officer of your nation you will conform yourself to the regulations of your own country and you will confine yourself to handing over to the highest officer in rank of the allied Power who was present during the action, a certified copy of the report or of the *procès-verbal* which you shall have drawn up.

ART. II. When you shall have effected a capture in presence of, and in sight of, an allied ship of war, you will mention exactly, in the report which you will draw up when the capture is a ship of war, and in the report or *procès-verbal* of the capture when the prize is a merchant vessel, the number of men on board your ship at the commencement of the action, without distinction of rank, as well as the name of the allied ship of war which happened to be in sight, and, if possible, the number of men embarked on board that ship, likewise without distinction of rank. You will deliver a certified copy of your report or *procès-verbal* to the commander of that ship.

ART. III. Whenever, in the case of a violation of a blockade, of the transport of contraband articles, of land or sea troops of the enemy, or of official despatches from or for the enemy, you find yourself under the necessity of stopping and seizing a merchant vessel of the allied nation, you will take care to :

1. Draw up a report (or *procès-verbal*), stating the place, the date, and the motive of the arrest, the name of the vessel, that of the captain, the number of the crew ; and

containing besides an exact description of the state of the vessel, and of her cargo.

2. Collect and place in a sealed packet, after having made an inventory of them, all the ship's papers, such as registers, passports, charter-parties, bills of lading, invoices, and other documents calculated to prove the nature and the ownership of the vessel and of her cargo.

3. Place seals upon the hatches.

4. Place on board an officer, with such number of men as you may deem advisable, to take charge of the vessel, and to ensure its safe conduct.

5. Send the vessel to the nearest port belonging to the Power whose flag it carried.

6. Deliver up the vessel to the authorities of the port to which you shall have taken her, together with a duplicate of the report (or *procès-verbal*) and of the inventory above-mentioned, and with the sealed packet containing the ship's papers.

ART. IV. The officer who conducts the captured vessel will procure a receipt proving his having delivered up the vessel, as well as his having delivered the sealed packet, and the duplicate of the report (or *procès-verbal*) and of the inventory above-mentioned.

ART. V. In case of distress, if the captured vessel is not in a fit state to continue its voyage, the officer charged to conduct to a port of the allied power a prize made on the merchant service of that power, may enter a port of his own country or a neutral port; and he will deliver his prize to the local authority, if he enters a port of his own country, and to the consul of the allied nation if he enters a neutral port, without prejudice to the ulterior measures to be taken for the adjudication of the prize. He will take care, in that case, that the report or *procès-verbal*, and the inventory which he shall have drawn up, as well as the sealed packet containing the ship's papers, be sent exactly to the proper court of adjudication.

ART. VI. You are not to consider as prisoners of war, and you will give free permission to land, to all women, children, and persons not belonging to the military or maritime profession who shall be found on board the captured vessels.

With this exception, and those which your own security may suggest, you will not permit any person to be removed from on board the vessel; and in all cases you will retain the master, supercargo, and others whose evidence may be essential to the adjudication of the prize.

You will treat as prisoners of war all persons whatever

who may be found on board the enemy's vessels, with the exceptions above mentioned in § 1.

You will place no other restriction on the liberty of allied or neutral subjects found on board allied or neutral vessels, than such as may be necessary for the security of the vessel.

With respect to your own countrymen, you will treat them according to the general instructions you have received, and you will, in no case, deliver them up to a foreign jurisdiction.

The persons who may have been exceptionally removed from the captured vessels shall afterwards be sent back to their own country, if they belong to the allied nation; if they are neutrals or enemies, they shall be treated as if they had been found on board vessels captured by you separately.

(L.S.)

CLARENDON.

(L.S.)

A. WALEWSKI.

(D.)

17 VICT. CAP. 18.

An Act for the Encouragement of Seamen and the more effectual Manning of her Majesty's Navy during the present War.

[2d June, 1854.]

Whereas her Majesty, by her order in council, dated the twenty-ninth day of March, in the year one thousand eight hundred and fifty-four, was pleased to order that general reprisals be granted against the ships, vessels, and goods of the Emperor of all the Russias, his subjects, and others inhabiting within any of his countries, territories, or dominions, so that her Majesty's fleets and ships shall and may lawfully seize all ships, vessels, and goods belonging to the Emperor of all the Russias, or his subjects, or others inhabiting within any of his territories, countries, or dominions, and bring the same to judgment in such courts of admiralty within her Majesty's dominions, possessions, or colonies, as shall be duly commissioned to take cognizance thereof: And whereas her Majesty hath of her royal munificence been graciously pleased, by her proclamation bearing the same date, to declare her intention to give the benefit of

all prizes taken during the present war to the captors thereof, being in her Majesty's service (save as therein excepted): Now, for the encouragement of the officers and crews of her Majesty's ships and vessels of war, and for inducing all British seamen, who may be in any foreign service to return into this kingdom, and become serviceable to her Majesty; and for the more effectually securing and extending the trade of her Majesty's subjects; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

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| I. This act may for all purposes be cited as "The Prize Act, Russia, 1854." | Short title of act. |
| II. This act shall come into operation on the first day of June, one thousand eight hundred and fifty-four. | Commencement of act. |
| III. In the construction of this act, the following terms shall have the meanings hereby assigned to them, if not inconsistent with the context or subject-matter: | Interpretation of certain terms in act. |
| "Her Majesty" shall include her Majesty, her heirs and successors: | "Her Majesty:" |
| "Lords of the Admiralty" shall include the Lord High Admiral and also the commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland for the time being: | "Lords of the Admiralty." |
| "Court of Admiralty" shall include the High Court of Admiralty of England and all Admiralty, Vice-Admiralty, and other courts, having or exercising Admiralty jurisdiction within her Majesty's dominions, which shall be duly authorized to take cognizance of and judicially to proceed in matters of prize: | "Court of Admiralty." |
| "Vice-Admiralty Courts" shall include all such courts other than the High Court of Admiralty of England: | "Vice Admiralty Courts." |
| "Judge" shall include any judge, deputy judge, surrogate, or other person duly appointed to act as judge in any court of Admiralty: | "Judge:" |
| "Ship and vessel" shall include all and all manner of ships, vessels, and boats: | "Ship and vessel:" |
| "Her Majesty's ships and vessels of war" shall include all ships and vessels belonging to her Majesty, as also any hired armed ships or vessels in her Majesty's service: | "Her Majesty's ships and vessels of war:" |
| "Officers and crew" shall include all flag officers, commanders, other officers, engineers, seamen, marines, soldiers, and others on board any of her Majesty's ships or vessels of war: | "Officers and crew." |
| "Government accountant" shall include any officer in charge of public money, whether belonging to the | "Government accountant." |

commissariat, customs, or any other department, who may have been, or may be hereafter, appointed by the Lords of the Treasury or Admiralty.

Vice Admiralty Courts to enforce orders of High Court of Admiralty.

IV. All vice-admiralty courts within her Majesty's dominions are hereby empowered, directed, and required to enforce upon all persons within their respective jurisdictions all orders whatsoever of the high court of admiralty of England, whether relating to prizes or to any matter or thing arising therefrom.

Ships and goods taken by her Majesty's ships and adjudged as prize to be divided according to her Majesty's proclamation.

V. The officers and crew of any of her Majesty's ships or vessels of war shall have the whole right and interest to and in the proceeds of all and every ship, vessel, goods, and merchandise which they have taken or shall hereafter take during the continuance of hostilities against the Emperor of all the Russias, after the same shall have been adjudged lawful prize in any court of admiralty, such proceeds to be divided in such proportions and after such manner as her Majesty by her proclamation has already ordered and directed, or as her Majesty shall think fit to order and direct by any proclamation hereafter to be issued : provided nevertheless, that whenever any prize shall be taken by any of her Majesty's fleets, squadrons, ships, or vessels of war, while acting in conjunction with any fleets, squadrons, ships, or vessels of war of any other power in alliance with her Majesty, the court of admiralty adjudicating thereon shall apportion to such ally a share of the proceeds of such prize, after the same has been condemned, proportionate to the number of officers and men present and employed by such ally, as compared with the number of officers and men present and employed on the part of her Majesty, in taking such prize, and without reference to their respective ranks ; and the share so apportioned to such ally shall be transmitted to such persons as may be duly authorized on behalf of such ally to receive the same.

Share reserved when allies act in conjunction.

Arms, stores, &c., taken by her Majesty's ships in any fortress on land, and ships and goods in any creek, &c., defended thereby, to be divided as other prize.

VI. The officers and crews of any of her Majesty's ships or vessels of war who shall take any fortress, or any arms, ammunition, stores of war, goods, merchandise, or treasure belonging to the state, or to any public trading company of any of her Majesty's enemies upon the land, or any ship or vessel, or goods or merchandise laden on board the same, in any creek, river, haven, or road belonging to or defended by such fortress, or in any way whatsoever belonging to such enemies, shall have the sole right and interest to and in the proceeds of all and every such ship or vessel, arms, ammunition, stores of war, goods, merchandise, and treasure, after final adjudication thereof as lawful prize to her Majesty in the court of admiralty ; and such court is hereby required judicially to proceed thereon as in other cases of

prize, and such proceeds shall be apportioned in such manner and proportions, both as to her Majesty's allies and otherwise, as in other cases of prize.

VII. In conjunct expeditions of the navy and army against any fortress or possession of her Majesty's enemies upon the land, the flag and general officers, field officers of the army, captains, commanders of the navy, and other officers, engineers, seamen, marines, soldiers, and others acting on such conjunct expedition, shall have such proportional right and interest as her Majesty shall think fit to order and direct in all the arms, ammunition, stores of war, goods, wares, merchandise, and treasure belonging to the state, or to any public trading company of such enemies, which shall be found in such fortress or possession, and also in every ship or vessel, with the arms, ammunition, tackle, apparel, and furniture thereof, and all the goods, wares, and merchandise and other effects on board the same, which shall be captured in any road, haven, river, or creek belonging to or defended by such fortress or possession, after final adjudication thereof as lawful prize to her Majesty in any of the courts aforesaid; and such courts are hereby required to proceed and adjudicate thereon as in other cases of prize, and the share assigned to the fleet by such directions shall be distributed in the same manner and proportions as in other cases of prize, and the share assigned to the army shall be distributed amongst the officers and soldiers, in such manner as her Majesty shall under her sign manual be pleased to direct: provided nevertheless, that the right and interest hereby given to the army employed on such conjunct expeditions shall not entitle the said army to share in the distribution of any ship, vessel, goods, or merchandise, or other effects, captured in the voyage to or from such fortress or possession.

As to divisions of prize taken in conjunct expeditions of the army and navy.

Proviso.

VIII. And whereas ships and vessels of foreign nations may pass the seas laden with naval and victualling stores intended to be carried to the ports of countries at war with her Majesty, whereby her Majesty's enemies may be supplied with materials to build, fit out, and provision ships and vessels of war: and whereas divers ships and vessels of foreign nations laden as aforesaid may be taken and brought into the ports of Great Britain, and the purchase of such stores laden on board such ships and vessels of foreign nations for the service of her Majesty may in many cases be expedient without proceeding to the condemnation thereof: be it therefore enacted, that the lords of the admiralty or their officers or agents, may purchase on the account or for the service of her Majesty all or any such stores found on board any such ships or vessels of foreign nations brought

Naval stores found on board foreign ships may be purchased by the admiralty for the public service.

British ships and vessels recaptured to be restored on payment of salvage.

In what case to be decreed as lawful prize.

Ships of her Majesty's subjects recaptured before carried into port may be allowed to prosecute their voyage.

Bounties to be granted on capture of enemy's armed ships or privateers.

into port as aforesaid; and the commissioners and officers of the customs for the time being may permit such stores so purchased as aforesaid to be entered and landed within any of the ports of her Majesty's dominions.

IX. Any ship, vessel, goods, or merchandise, belonging to any of her Majesty's subjects, captured by any of her Majesty's enemies, and afterwards recaptured from the enemy by any of her Majesty's ships or vessels of war, shall be adjudged by the decree of the court of admiralty, to be restored to the owner or proprietor thereof, upon payment for and in lieu of salvage, of one-eighth part of the true value of the said ship, vessel, goods, or merchandise respectively, and such salvage of one-eighth, shall be divided and distributed in such manner and proportion, as is hereinbefore directed in cases of prize: provided nevertheless, that if any such ship or vessel, captured and recaptured as aforesaid, shall have been by her Majesty's enemies set forth or used as a ship or vessel of war, it shall not be restored to the former owner or proprietor thereof, but shall be adjudged lawful prize for the benefit of the captors.

X. Any ship, or vessel, belonging to any of her Majesty's subjects, whether in ballast, or laden with any goods or merchandise belonging to the same, which shall have been captured by the enemy and recaptured by any of her Majesty's ships and vessels of war, before the same shall have been carried into an enemy's port, may, with the consent of the recaptors, prosecute her voyage, and it shall not be necessary for the recaptors to proceed to adjudication, till the return of the ship or vessel to some port within the united kingdom; and the master or owner thereof, or his agent, may, with the consent of the recaptor, unlade and dispose of the cargo before adjudication; and in case the ship or vessel shall not within six months return to some port within the united kingdom, the recaptor may, notwithstanding, institute proceedings against the said ship or vessel, goods or merchandise, in the high court of admiralty of England, and the said court may thereupon award one-eighth part of the value of the said ship, vessel, goods, or merchandise to the recaptor thereof, and may enforce the payment thereof, either by warrant of arrest against the said ship or vessel, goods or merchandise respectively, or by monition and attachment against the respective owners thereof.

XI. Whereas it is expedient to give encouragement to the officers and crews of her Majesty's ships and vessels of war, to attack and destroy any armed ships or vessels of war, or privateers, belonging to the enemy: be it enacted, That the officers and crews of any of her Majesty's ships or vessels of war, who shall have been actually present at the

taking, sinking, burning, or otherwise destroying of any ship or vessel of war, or privateer, belonging to her Majesty's enemies, shall be entitled to a bounty of five pounds of lawful money of Great Britain, for each and every person who was alive on board any such ship or vessel of war, or privateer belonging to her Majesty's enemies, at the beginning of the attack or engagement between them, the numbers of such persons respectively to be proved by the ship's papers, or by the oaths of three or more of the persons, belonging to the said enemy's ship or vessel of war or privateer, if so many shall survive, or by the oaths of the survivors, or if there be no survivor, then by the oaths of three or more of the officers and crew of the capturing ship or vessel, or by such other evidence, as under the circumstances of the case, shall by the judge of the court of admiralty be deemed sufficient proof thereof; and such bounties shall be paid out of any monies voted by parliament for that purpose, or out of the consolidated fund of the united kingdom of great Britain and Ireland, upon the production of an official copy of the decree of the said court of admiralty, setting forth the number of persons who were alive on board such ship or vessel of war or privateer, belonging to the enemy at the beginning of the attack or engagement between them; provided that every such decree shall be subject to appeal, as is hereinafter provided in cases of prize.

XII. All provisions contained in this act, respecting the distribution of prize, shall apply to bounty money, salvage upon recapture, as well as to any shares of prize, which may be awarded by the prize court of any ally, to the officers and crews of her Majesty's ships and vessels of war, present at the capture of any such prize.

Regulations of prize to apply to bounty, salvage, and shares assigned by allies.

XIII. Ships, vessels, goods, and merchandise, captured by any private ship or vessel, hired by or in the service of her Majesty's commissioners of customs or inland revenue, shall belong to her Majesty in her office of admiralty, and be applied and disposed of in such manner as her Majesty, under her sign manual shall order and direct, after legal adjudication thereof.

Exception as to vessels in the service of the customs or inland revenue.

XIV. For the encouragement of the capture of armed ships and vessels, belonging to the enemy, be it enacted, That it shall be lawful for the captors to include in one adjudication any number, not exceeding six of such small armed ships, having a commission or letter of marque from the enemy, not exceeding seventy tons each, and which shall have been taken within the space of three months, preceding the application to the court of admiralty for such adjudication.

How many small armed ships may be included in one adjudication.

XV. All ships, vessels, goods, and merchandise, which

Captures brought into

port to be
handed over
to marshal
or officer of
customs.

shall be brought into port within the jurisdiction of the court of admiralty, in order to be proceeded against to condemnation as prize, shall be forthwith, and without breaking bulk, delivered up to and remain in the custody and care of the marshal, his substitute, or other officers to be appointed by the said court, or if there be no such officer, then shall be delivered up to the collector or comptroller, or other principal officer of the customs, or of navigation laws at such port, and shall remain in such custody and care, subject to the decree of the court.

Mode of pro-
cedure against
prize.

XVI. That upon any ship, vessel, goods, or merchandise, captured as prize, being brought into port, the captor, or one of his chief officers, or some other person present at the capture, shall bring or send, as soon as possibly may be, three or four of the principal persons belonging to the captured ship or vessel (two of whom shall always if possible be either the master, supercargo, mate, or boatswain) before the judge of the court of admiralty, or such person as shall be lawfully commissioned in that behalf, by whom they shall be sworn and examined upon the standing interrogatories; and within five days after request made to the judge of the court of admiralty the preparatory examinations on the standing interrogatories shall be concluded, unless good and sufficient reason be shown for an extension of such time.

Examination
of witnesses
on standing
interrogato-
ries.

Affidavit as to
letters and
papers found
on board.

XVII. The captor shall, at the time of producing the aforesaid persons to be examined, and before any monition shall be issued, bring and deliver into the registry of the said court of admiralty all such books, papers, passes, sea briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings whatsoever as shall be delivered up or found on board any such ship or vessel; and the captor, or one of his chief officers, or some other person who was present at the capture, and saw the said papers and writings delivered up or otherwise found on board at the time of the capture, shall make oath that the said papers and writings are brought and delivered in as they were received and taken, without any fraud or addition, subduction, alteration, or embezzlement whatever, or otherwise shall account for the absence or for the altered plight and condition of the same, upon oath to the satisfaction of the court, and in the event of no such books, papers, passes, sea briefs, charter-parties, bills of lading, cockets, letters, or other documents or writings, being delivered up as found on board such ship or vessel, such captor, chief officer, or other person shall make oath to that effect.

What docu-
ments to be
translated for

XVIII. In order to save unnecessary delay and expence, the captor and claimant may agree, or in case there shall be

no claimant, the captor may direct which and what parts (if any) of the several books, papers, passes, sea briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings delivered up or found on board the captured ship or vessel shall be translated, in order to the same being used in the cause.

the use of the cause.

XIX. In case no claim in respect of any captured ship, vessel, goods, or merchandise shall be duly entered in the usual form, and verified on oath, or if there be any claim, and the claimant shall neglect or refuse to give security for costs in the sum of sixty pounds sterling within five days from the time of entering such claim, the judge of the court of admiralty shall, within three days after request in that behalf made to him, decree the usual monition, returnable within twenty days, citing all persons in general to show cause why the said ship, vessel, goods, or merchandise should not be condemned as lawful prize; and upon the return of such monition duly executed the said judge shall, upon the production to him of the said preparatory examinations or a copy thereof, as also of all the aforesaid books, papers, sea briefs, charter-parties, bills of lading, cockets, letters, and other documents and writings, proceed with all convenient speed either to release or condemn the said ship, vessel, goods, or merchandise, or may allow further time either for a claim to be entered or security to be given.

Where there is no claim, or no security for costs is given by the claimant.

Monition for adjudication.

XX. In case a claim verified upon oath shall be duly entered, and security as aforesaid be given thereupon, and there shall appear no occasion to call for any further proof, as hereinafter mentioned, the judge shall, as soon as conveniently may be, after such claim shall have been entered and security given, proceed to sentence as aforesaid touching such captured ship, vessel, goods, or merchandise.

Where claim and security for costs is given.

XXI. Whenever any ship, vessel, goods, or merchandise shall have been captured and brought in by any of her Majesty's ships and vessels of war, but the captors shall neglect or refuse, notwithstanding such capture and seizure as aforesaid, to institute proceedings in the court of admiralty in order to bring the said ship, vessel, goods, or merchandise to adjudication, the judge of such court shall, upon the request of any claimant, who shall have duly entered his claim verified upon oath, and shall have given good and sufficient security as aforesaid, decree a monition against the captors, returnable within six days, citing them to appear and proceed to the legal adjudication of such ship, vessel, goods, or merchandise; and upon the return of such monition duly served, the judge of such court shall forthwith proceed to the adjudication thereof.

Monition to proceed to adjudication.

XXII. Whenever it shall appear doubtful to the judge Court may

order further
proof.

of the court of admiralty, upon the production to him of the aforesaid preparatory examinations and papers, whether the said capture be lawful prize or not, he may direct further proof to be adduced either by affidavit, or by examining witnesses on pleadings, or by the production of any further papers or documents, as to him shall seem meet, and upon the production of such further proof may proceed to adjudicate thereupon.

Claim of joint
capture to be
admitted only
on security
being given
for proportion
of expenses,
costs, and
damages.

XXIII. Before condemnation no claim on behalf of any asserted joint captor shall be admitted until security shall have been given by or on behalf of such asserted joint captor to contribute to the actual captor his proportion of the expenses, costs, and damages that may be incurred by or awarded against the actual captor on account of the capture and detention of the said ship, vessel, goods, or merchandise; and after final condemnation no such claim shall be admitted until the asserted joint captor has paid his proportion of all such expenses as shall have attended the obtaining the final condemnation, and unless he show sufficient cause to the court why such claim was not asserted at or before the return of the monition: Provided always, that nothing herein contained shall extend to the asserted interest of any flag officer claiming to share in any prize by virtue of his flag.

Ship, vessel,
or goods may
be appraised,
and after ap-
praisement
may be sold,
by decree of
the court.

XXIV. Whenever it appears desirable, either from the nature of the property captured, the probable length of the proceedings, or any other sufficient cause, that the ship, vessel, goods, or merchandise, or any part thereof, should be sold, the judge of the court of admiralty may direct the same to be appraised by competent persons, sworn to appraise the same according to the best of their skill and knowledge, and for this purpose may direct the said goods or merchandise to be unladen, and an inventory thereof to be taken, and after such appraisement may direct the same or any part thereof to be warehoused, under safe and proper keeping, or may direct the same, or any part thereof, to be sold, and the proceeds to be paid to the account of her Majesty's paymaster general at the Bank of England on account of naval prize, or to some government accountant in her Majesty's dominions, in order that the same may be transferred to the said account; and in case the said ship, vessel, goods, or merchandise should be decreed to be restored to any claimant thereof, the proceeds arising therefrom, and which shall have been so paid to the naval prize account or to a government accountant as aforesaid, shall be repaid to such claimant; but in case the same shall be condemned as lawful prize, such proceeds shall be distributed to and amongst the captors in manner hereinafter directed.

In case ship,
&c., decreed
to be restored.

XXV. The judge of the court of admiralty may, upon the application of the claimant, direct any ship, vessel, goods, or merchandise brought before it for adjudication to be delivered up to him upon the same being appraised by competent persons as aforesaid, and upon his giving good and sufficient security to pay the captor the appraised value thereof, in case the same should be adjudged lawful prize; and may direct the captor to give good and sufficient security to pay such costs and damages as to him may seem meet, in case such ship, vessel, goods, or merchandise shall not be condemned as lawful prize.

Court may direct the ships or goods to be delivered up to the claimant on giving security.

XXVI. Whenever any ship, vessel, goods, or merchandise has been condemned as prize in the court of admiralty, the judge of the said court shall forthwith direct the same to be appraised and sold by the officers of the court, or by persons authorised by the court for that purpose, and the proceeds thereof to be forthwith paid to the account of her Majesty's paymaster general at the Bank of England on account of naval prize, or to some government accountant within her Majesty's dominions, in order that the same may be transferred to the said account.

Sale of vessel after condemnation.

XXVII. Any bounty, salvage, or other monies, payable and distributable under the provisions of this act, and amongst the officers and crews of any of her Majesty's ships and vessels of war, shall in like manner be forthwith paid to the account of her Majesty's paymaster general at the Bank of England on account of naval prize, or to some government accountant within her Majesty's dominions, in order that the same may be transferred to the said account.

Bounty, salvage, &c., to be paid to the account of the paymaster general.

XXVIII. Whenever the proceeds of any ship, vessel, goods, or merchandise condemned as prize, or any bounty, salvage, or other moneys payable and distributable under the provisions of this act, have been paid into the account of her Majesty's paymaster general at the Bank of England on account of naval prize, or to some government accountant within her Majesty's dominions, in order that the same may be transferred to the said account, the high court of Admiralty of England, or the court which shall have condemned the said prize or awarded the said bounty, salvage, or other monies, may direct the payment thereof of all costs, charges, and expenses which may be chargeable against the same, or which may have been incurred by the captor, his attorney or agent, after such costs, charges and expenses shall have been taxed or allowed by the registrar of such court, or his deputy; and the balance of such prize, bounty, salvage, or other monies shall thereupon, and after the time for appealing shall have expired, be distributed by the lords

Final distribution of bounty, salvage, &c.

of the admiralty to and amongst the persons entitled thereto, after the same shall have been notified in the *London Gazette*.

Parties claiming benefit under this act may resort to the court of admiralty of England.

XXIX. The lords of the admiralty or any party claiming any interest in any prize, bounty, salvage, or other monies payable and distributable under the provisions of this act, and which have been paid or transferred to the naval prize account as aforesaid, may, prior to the distribution thereof, resort to the high court of admiralty of England for the purpose of obtaining the judgment of the said court in that behalf, and the judge of the said court shall proceed to hear and determine the same, and may make such order in the premises as to him shall seem right.

Registrars of vice admiralty courts shall transmit accounts.

XXX. The registrars of the vice admiralty courts or their deputies shall, on the first day of January and first day of July in every year, transmit to the registry of the high court of admiralty of England, to remain of record therein, in such form as the lords of the admiralty may direct, a list or return of all cases which have been adjudged in their respective courts under the provisions of this act during the six months next preceding; provided that it shall be lawful for the lords of the admiralty, from time to time, to vary or alter such form as to them may seem meet; and the registrar of the high court of admiralty of England shall, as soon as conveniently may be after the receipt thereof, transmit a copy of such list or return to the lords of the admiralty, to be by them laid before both houses of parliament.

High court of admiralty of England may compel production of proceeds, &c.

XXXI. The judge of the high court of admiralty of England may, on the application of the lords of the admiralty or of any person interested in the proceeds of any prize, or in any salvage, bounty, or other monies, and on an affidavit setting forth the circumstances of the case, compel, by process of the court and by monition and attachment, the production of any books, papers, or other documents relating thereto, and the paying or transferring of such proceeds, salvage, bounty, or other monies into the naval prize account as aforesaid, and the answering to such interrogatories touching the same as the court may approve, and may make such order in the premises touching and concerning the same, and the costs of such proceedings, as to it shall seem meet.

Penalty of one pound per cent. per month on retaining proceeds contrary to this act.

XXXII. Any captor or other person who shall acquire or retain the proceeds of any prize or any salvage, bounty, or other monies contrary to the provisions of this act, except for reasonable cause to be allowed by the court of admiralty, shall pay interest thereon not exceeding the rate of one pound per centum per month for such time as the same shall so be in his custody or possession, in addition to any other

penalties imposed by this act, and such interest shall be deemed to be part of such proceeds, and be paid and applied accordingly.

XXXIII. The captor or claimant may appeal from any sentence or any interlocutory decree having the force of a definitive sentence, given or pronounced in the court of admiralty, to her Majesty in council, and when required shall give good and sufficient security that he will effectually prosecute such appeal, and pay such costs, damages, and expenses as may be awarded by her Majesty or by the judicial committee of the privy council; and every such appeal shall be made in such manner and form, and subject to such rules, orders, and regulations, as are now or for the time being may be in force in respect to any ecclesiastical and maritime causes of appeal. Provisions for appeal.

XXXIV. The judicial committee of the privy council shall have full power, jurisdiction, and authority to proceed to hear and report upon all and all manner of causes of appeal relating to captures, recaptures, bounties, seizures, prizes, and reprisals of all ships, vessels, goods, and merchandise already seized and taken, or which shall be hereafter seized and taken, that may be brought before them from the court of admiralty, and may therein exercise all such powers as now appertain to them in respect of appeals from any ecclesiastical court or court of admiralty, and in addition thereto shall have and exercise all such powers as are by this act given to the court of admiralty, and all such powers as heretofore have been wont to be exercised by the commissioners of appeal in prize causes. Jurisdiction of the judicial committee in prize appeals.

XXXV. All processes, papers, and other documents, required for the purposes of any appeal under the provisions of this act shall be transmitted to and remain in the custody and possession of the registrar of her Majesty in ecclesiastical and maritime causes; and the said registrar shall, if he shall so think fit, either in person or by deputy, attend the hearing by the said judicial committee of all prize appeals, and shall do all such things, and shall have and exercise the same powers and privileges in respect to such prize appeals, as he now does, or has, or exercises in respect to appeals in ecclesiastical and maritime causes. Custody of processes, papers, &c.

XXXVI. In case any person who was not an original party in the cause shall intervene, or interpose an appeal from any sentence or interlocutory decree, having the force of a definitive sentence, given or pronounced in the court of admiralty, he shall at the same time enter his claim, verified upon oath, and shall give good and sufficient security for costs, otherwise such appeal shall be null and void. Persons intervening on appeal must enter a claim.

XXXVII. In every appeal from a sentence or interlocu- Limit of time of appeal.

tory decree, having the force of a definitive sentence, given or pronounced in any court of admiralty, the usual inhibition shall be extracted from the registry of her Majesty, in ecclesiastical or maritime causes, within three months, if the appeal be from the high court of admiralty of England, and within six months, if the appeal be from the vice admiralty court of the Cape of Good Hope, or from any vice admiralty court on this side of the Cape of Good Hope or Cape Horn, and within twelve months, if the appeal be from any vice admiralty court beyond the Cape of Good Hope or Cape Horn, from the date of such sentence or interlocutory decree as aforesaid, otherwise the appeal shall be null and void to all intents and purposes: provided nevertheless, that the said judicial committee may, upon sufficient cause shown, allow the inhibition to be extracted and the appeal to be prosecuted, after the expiration of the aforesaid respective periods.

Prize goods
and merchan-
dize to be
liable to duties.

XXXVIII. Nothing herein contained shall be taken, to exempt any goods or merchandise condemned as prize and sold under the provisions of this Act, from the payment of any duties, to which they would otherwise be subject upon importation: provided nevertheless, that if any such goods or merchandise brought into this kingdom, be unfit for the markets thereof, the commissioners of her Majesty's treasury may remit the whole or any part of such duties, upon proof that the said goods or merchandise are unfit for the markets of this kingdom, or that the proceeds of such sale, after payment of duties, will be insufficient to satisfy the just and reasonable claims thereon, in either of which cases, such goods or merchandise shall be exported or destroyed, under the direction of the commissioners of customs: provided always, that whenever any such goods or merchandise shall be brought into the united kingdom, the master or other person in charge or command of the vessel, in which the same are brought, shall on arrival in any part of the united kingdom "bring to," at the stations appointed by the commissioners of her Majesty's customs, for the boarding of ships by the officers of customs, and shall on the arrival of the ship, at her place of mooring in such port forthwith, give notice to the collector or controller of such port, who shall thereupon, place any officer or officers on board such ship, in charge or command of the goods, until the same are duly lodged in some approved warehouse for security of the duties due thereon, or until such goods are otherwise legally disposed of, or discharged out of the custody of the customs.

Deserters not
entitled to
bounty, &c.

XXXIX. No person or persons belonging to any of her Majesty's ships or vessels of war, or to any merchant ship employed in her Majesty's service, who shall run away, or

withdraw himself or themselves from the ship or vessel, by which any prize or prizes shall be taken from any of her Majesty's enemies, or shall otherwise desert or withdraw himself or themselves from her Majesty's service, before or after notification, as by law directed, shall be given of the day appointed for the payment of the several shares to the captors of the said prize or prizes, or who shall be marked in the books of any ship or vessel in the service of her Majesty, as having run therefrom, shall have or be entitled to have, or claim any interest or benefit from the said share or shares of the said prize or prizes, or of the bounty money herein-before mentioned, or any part thereof that shall then remain unpaid, but such shares, as well as all other shares, which shall not be legally demanded within six years, after the same shall have been duly notified, shall, at the discretion of the lords of the admiralty, be paid into the consolidated fund of the united kingdom of Great Britain and Ireland: provided nevertheless, that with respect to such forfeited or unclaimed shares, the commissioners of her Majesty's treasury may, upon the recommendation of the lords of the admiralty, and upon sufficient cause being shown, make an order for the repayment thereof, out of the consolidated fund to the parties entitled thereto, or the lords of the admiralty may remit, or pay the same to such parties out of any monies then remaining at the credit of the naval prize account.

XL. If the master or other person, having the command of any merchant ship or vessel under convoy, shall wilfully disobey any signals or instructions, or any other lawful commands of the commander of the convoy, or shall desert such convoy without notice given and leave obtained for that purpose, he shall be liable to be articted for such offence in the high court of admiralty of England, at the suit of the Queen in her office of admiralty, and upon conviction thereof shall be fined, at the discretion of the said court, in any sum not exceeding five hundred pounds, and shall suffer such imprisonment not exceeding one year, as the said court shall adjudge.

Penalty on masters of merchant vessels under convoy for disobeying signals or orders or deserting convoy.

XLI. If any ship, vessel, goods, or merchandise be taken, by collusion or connivance with the enemy, by any officer commanding any of her Majesty's ships or vessels of war, the said ship, vessel, goods, and merchandise may be declared and adjudged by the court of admiralty to be good prize to her Majesty, and shall remain at the disposal of her Majesty, and the officer so offending may be articted in the high court of admiralty of England at the suit of her Majesty in her office of admiralty, and upon conviction shall forfeit a sum not exceeding one thousand pounds, one moiety thereof

Penalty on collusive captures.

No ships or goods belonging to her Majesty's subjects to be ransomed.

Contracts for ransom to be void.

Penalty on persons ransoming.

Penalty on commanders ransoming or collusively restoring ships or goods taken as prize.

Penalties for breaking bulk and embezzlement.

to the use of her Majesty, and the other moiety to the use of the person who shall sue for the said penalty.

XLII. It shall not be lawful for any of her Majesty's subjects to ransom or to enter into any contract or agreement for ransoming any ship, vessel, goods, or merchandise belonging to any of her Majesty's subjects which shall be captured by any of her Majesty's enemies; and all contracts and agreements which shall be entered into, and all bills, notes, and other securities, which shall be given by any person for ransom of any ship, vessel, goods, or merchandise, contrary to the provisions of this act, shall be absolutely null and void.

XLIII. Any person who shall ransom or enter into any contract or agreement for ransoming any ship, vessel, goods, or merchandise contrary to the provisions of this act, shall for every such offence be liable to be article in the high court of admiralty of England at the suit of the Queen in her office of admiralty, and upon conviction thereof shall incur a penalty not exceeding five hundred pounds, to be imposed by the judge of the said court, unless it shall appear that the circumstances of the case were such as to justify the said ransoming or contract or agreement for the same.

XLIV. Any commander of any of her Majesty's ships or vessels of war who shall agree with any person whomsoever for the ransoming of any ship, vessel, goods, or merchandise, or any part thereof, after the same shall have been taken as prize, and shall, in pursuance of such agreement, or otherwise by collusion, actually quit, set at liberty, restore, or discharge any such ship, vessel, goods, or merchandise, or any part thereof, shall for every such offence be liable to be article in the high court of admiralty of England at the suit of her Majesty in her office of admiralty, and upon conviction thereof shall forfeit and suffer such penalty or fine as the said court shall adjudge, unless it shall appear to such court that the circumstances of the case were such as to have justified the same.

XLV. If any person belonging to any of her Majesty's ships or vessels of war shall break bulk on board of any prize, with a view to embezzle any money, jewels, plate, goods, merchandise, tackle, furniture, or apparel, of or belonging thereto, such person shall be liable to be article for every such offence before the high court of admiralty of England at the suit of her Majesty in her office of admiralty, and upon conviction thereof shall forfeit to her Majesty his whole share in such prize, as also treble the value of all such money, jewels, plate, goods, merchandise, tackle, furniture, or apparel, unless it shall appear to the court that the circum-

stances of the case were such as to have rendered the appropriation thereof necessary.

XLVI. The court of admiralty may, upon due proof of the breach of any of her Majesty's instructions relating to prizes, or of any offence against the law of nations, committed by the captor in relation to any ship, vessel, goods, or merchandise captured as prize, or to the persons taken on board the same, condemn such prize to her Majesty's use and disposal.

Penalty for breach of instructions relating to prizes or offences against the law of nations.

XLVII. Any offence committed by any of the officers and crew serving on board of or belonging to any hired armed ship or vessel in her Majesty's service shall be tried and punished in such manner as the like offences are tried and punished when committed by any person serving on board of or belonging to her Majesty's fleet; and all such offenders who are to be tried by a court-martial shall be placed under all necessary restraint on board the ship or vessel in which such offence shall be committed until they can be so tried by a court-martial; and upon application made to the lords of the admiralty, or to the commander-in-chief, or senior officer of her Majesty's ships or vessels of war abroad, authorized to assemble and hold courts-martial, the said lords of the admiralty, or such commander-in-chief or senior officer respectively, may and are hereby required to assemble and hold a court-martial for the trial and punishment of such offenders; and the officer commanding every such hired armed ship or vessel shall have the same power in respect of the other officers and crew on board the same as officers commanding her Majesty's ships or vessels of war have over the officers and crews of such ships and vessels; and the naval commander-in-chief and senior naval officers in her Majesty's service shall have and exercise the same powers over the officers and crews of such hired armed ships and vessels as they have or may exercise over the officers and crews belonging to her Majesty's ships and vessels of war.

Offences committed on board armed ships of war in her Majesty's service to be tried and punished as offences committed in her Majesty's fleet.

Offenders to be confined, &c.

Court martial to be called.

XLVIII. It shall be lawful for her Majesty, by order in council, to assign to the judge of any court which may be duly commissioned to take cognizance of matters of prize, such salary, not exceeding five hundred pounds, as to her Majesty may seem meet, and such salaries shall be paid out of monies to be voted by parliament for that purpose, at such times and in such manner and subject to such regulations as her Majesty by her said order in council may be pleased to direct; provided that no such judge shall be entitled to any further emolument arising from fees or otherwise, in respect of any prize business transacted in such court, but an account of such fees shall be kept by the registrar of

Her Majesty may grant salaries to judges of vice admiralty courts to act as judges in prize causes.

such court, and be at the disposal of the commissioners of the treasury.

Her Majesty may allow such judges a retiring pension.

XLIX. Her Majesty may give and grant to any judge of any vice admiralty court in matters of prize an annuity or pension for the term of his natural life, in accordance with the regulations and provisions of the fourth and fifth William the Fourth, chapter twenty-four.

No registrar or other officer of any court of admiralty to act as advocate or proctor.

L. No registrar, deputy or assistant registrar, nor any marshal or deputy marshal of or belonging to any court of admiralty, or the court of appeal therefrom, shall either directly or indirectly act or be in any manner concerned, either as advocate, proctor, or agent, in any cause, matter, or business whatsoever depending in the court of which he shall then be the registrar, deputy or assistant registrar, marshal or deputy marshal respectively; and every registrar, deputy or assistant registrar, marshal or deputy marshal, who shall have proved to the satisfaction of such court, after having been heard in his defence, to have been guilty of such offence, shall be dismissed from such office or employment.

Proctors to be concerned only for one party in a cause.

LI. No proctor or other person practising as a proctor in the court of admiralty or in the court of appeal therefrom, being employed by one of the parties in the cause, shall be concerned, by himself or his partner, or by any other person, directly or indirectly, by or on behalf of the adverse party in such cause; and every such proctor or other person so offending shall, upon conviction, forfeit to her Majesty the sum of five hundred pounds, and be thenceforth disqualified and rendered incapable of practising as a proctor or otherwise in any court of admiralty, or before the judicial committee of the privy council.

Power for the judge to make rules of court.

LII. It shall be lawful for the judge of the court of admiralty from time to time to make and submit to her Majesty in council such rules, orders, and regulations respecting the practice and mode of proceeding of the said court, and the conduct and duties of the officers and practitioners therein in all matters relating to prize, as to him shall seem fit, and such rules, orders, and regulations, if approved by her Majesty in council, shall take effect and shall remain in force until the same are altered or repealed in like manner.

Table of fees to be hung up in vice admiralty courts.

LIII. Her Majesty may, by order in council, authorize tables of fees to be prepared for the several courts of admiralty throughout her dominions, and for the practitioners therein, and one of such tables shall be suspended in some conspicuous place of the court for which the same has been prepared, and no judge or surrogate,

registrar or deputy-registrar, marshal or deputy-marshal, or any other officer whatever belonging to any such court, or any practitioner in any such court, shall either directly or indirectly, receive or take, or be allowed for the subject to which the fee relates, any fee beyond those specified in the said table: provided always, that her Majesty may, by her order in council, from time to time vary, alter, or repeal such tables of fees as to her Majesty shall seem meet.

LIV. Any person who shall wilfully and corruptly swear, declare, or affirm falsely in any action, suit, or other proceeding under the provisions of this act, or in respect of any matter required to be verified on oath by this act, or shall suborn any other person so to do, shall be deemed guilty of perjury or of subornation of perjury, as the case may be, and shall be liable to be prosecuted and punished accordingly.

Punishment
of persons
guilty of per-
jury.

LV. All penalties and forfeitures imposed by this act, wherever the same shall arise and become forfeited, may be recovered in like manner as any debt due to her Majesty in any of her Majesty's superior courts of record at Westminster, or by monition and attachment in the high court of admiralty of England, unless in cases where any other mode is by this act particularly directed; and all such penalties and forfeitures which shall arise or become forfeited in any part of her Majesty's dominions abroad may be recovered in any court of record of her Majesty in the colony, territory, or place where the same shall arise or have become forfeited, or in any of her Majesty's vice admiralty courts having jurisdiction there.

Recovery of
penalties and
forfeitures.

LVI. No action shall be brought against any person or persons whomsoever for any matter or thing whatever done or committed under or by virtue or in the execution of this act unless such action shall be brought within two years next after the doing or committing of such matter or thing, nor, unless notice of action shall have been given, one calendar month at least before the commencement of the same, which notice shall specify the cause of the said action; and if the plaintiff or plaintiffs shall be nonsuited, or suffer discontinuance, or forbear further prosecution, or if judgment shall be given for the defendant or defendants, such defendant or defendants shall recover his costs to be taxed as between attorney and client.

Limitation of
actions.

LVII. This act shall continue in force during the present war, and no longer, save and except as to all such matters and things as shall then be depending in judgment in the court of admiralty, or before the judicial committee of the privy council, or in any court of record within her Majesty's

Continuance
of act.

dominions, at the time when the present war shall cease, and also save and except as to the carrying out and finally disposing of all such other matters or things as shall arise out of the present war in reference to the provisions of this act; and also save and except as to all offences which may have been committed against, and all penalties and forfeitures which may have been incurred under the provisions of this act, in respect whereof proceedings shall and may be taken as if this act still continued in force.

Not to extend
to seizures
made by offi-
cers of cus-
toms or excise.

LVIII. Nothing in this act shall extend or be deemed or construed to extend to any seizure of ships, vessels, goods, or merchandise made by any officer of customs or excise for any breach of the laws or regulations relating to the customs or to trade or navigation.

(E.)

7 VICT. CAP. 19.

An Act for facilitating the payment of her Majesty's Navy, and the payment and distribution of Prize, Bounty, Salvage, and other monies to and amongst the Officers and Crews of her Majesty's ships and vessels of war; and for the better regulation of the accounts relating thereto.

[2nd June 1854.]

WHEREAS it is desirable to facilitate the payment of the officers and crews on board her Majesty's ships and vessels of war, as also to provide further and more effectual means for the payment and distribution of any prize, bounty, salvage, or other monies which may be payable and distributable to and amongst the officers and crews of her Majesty's ships and vessels of war: and whereas, by her proclamation bearing date the twenty-ninth day of December, one thousand eight hundred and fifty-three, her Majesty was pleased to direct the mode in which the distribution of any such prize, bounty, salvage, or other monies should be made; and by her further proclamation, bearing date the twenty-ninth day of March one thousand eight hundred and fifty-four, her Majesty was graciously pleased to order and direct that the net proceeds of all captures which should be

made during the present war with Russia by any of her ships or vessels of war should be for the entire benefit of the officers and crews of such ships and vessels of war as might have effected such capture, after the same should have been finally adjudged to her Majesty as lawful prize: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

I. This act may for all purposes be cited as, "The Naval Pay and Prize Act, 1854." Short title of act.

II. This act shall come into operation on the first day of June one thousand eight hundred and fifty-four. Commencement of act.

III. In the construction of this act the following terms shall have the respective meanings hereinafter assigned to them (if not inconsistent with the context or subject matter); that is to say, Interpretation of certain terms in this act.

"Her Majesty" shall include her Majesty, her heirs and successors: "Her Majesty:"

"Lords of the Admiralty" shall include the lord high admiral and also the commissioners for executing the office of lord high admiral of the united kingdom of Great Britain and Ireland for the time being: "Lords of the Admiralty:"

"Court of Admiralty" shall include the high court of admiralty of England, and any admiralty, vice-admiralty, or other court within her Majesty's dominions, which shall be duly authorized to take cognizance of and judicially to proceed in matters of prize: "Court of Admiralty:"

"Vice-Admiralty Courts" shall include all such courts other than the high court of admiralty of England: "Vice Admiralty Courts:"

"Judge" shall include any judge, deputy judge, surrogate, or other person duly appointed to act as the judge in any court of admiralty: "Judge:"

"Ship and vessel" shall include all and all manner of ships, vessels, and boats: "Ship and vessel:"

"Her Majesty's ships and vessels of war" shall include all ships and vessels belonging to her Majesty, as also any hired armed ships or vessels in her Majesty's service: "Her Majesty's ships and vessels of war:"

"Officers and crew" shall include all other officers, engineers, seamen, marines, soldiers, and others on board any of her Majesty's ships or vessels of war: "Officers and crew:"

"Government accountant" shall include any officer in charge of public money, whether belonging to the commissariat, customs, or any other department, who may have been, or may be, hereafter appointed by the lords of the treasury or admiralty. Government accountant.

IV. Whenever any ship, vessel, goods, or merchandise Proceeds of any prize to

be paid to the
naval prize
account.

has been condemned in any court of admiralty, or other Court having competent jurisdiction, whether as prize of war, or in pursuance of any act of parliament relating to the revenues of customs and to trade and navigation, or to the abolition of the slave trade, or to the capture and destruction of pirates and piratical vessels, or on any other grounds, and the proceeds arising therefrom have thereby or by her Majesty's proclamations become payable and distributable to and amongst the officers and crews of any of her Majesty's ships and vessels of war, the judge of the court of admiralty or other court by which the decree or interlocutory sentence shall have been pronounced shall forthwith direct the said ship, vessel, goods, or merchandise to be appraised by competent persons sworn to appraise the same, according to the best of their skill and knowledge, and shall direct the same to be sold by the marshal or other officer of such court, or by persons to be appointed by the court for that purpose; and the proceeds arising therefrom, or if the said ship, vessel, goods, or merchandise shall have been released on bail, then the appraised or agreed value thereof shall be paid to the account of her Majesty's paymaster general at the Bank of England on account of naval prize, or into the hands of some government accountant within her Majesty's dominions.

Bounties and
salvage to be
paid to the
naval prize
account.

V. All bounties, whether for the capture or destruction of enemies' ships or vessels in time of war, or for captures or seizures made under the provisions of the several acts of parliament passed relating to the revenues of customs and to trade and navigation, or to the abolition of the slave trade, or for the capture and destruction of pirates and piratical vessels, and all awards for salvage or other services, whether the same shall have been by the decree of a competent court or by agreement, and which shall be payable and distributable to and amongst the officers and crews of any of her Majesty's ships and vessels of war, shall be forthwith paid to the account of her Majesty's paymaster general at the Bank of England on account of naval prize, or into the hands of some government accountant within her Majesty's dominions, in order that the same may be transferred to the said account.

As to the
distribution of
proceeds,
bounty, sal-
vage, &c.

VI. Whenever the proceeds of any ship, vessel, goods, or merchandise, or any bounty, salvage, or other award as aforesaid, shall have been paid into the account of her Majesty's paymaster general at the Bank of England on account of naval prize, or into the hands of some government accountant within her Majesty's dominions, the high court of admiralty of England or the court which may have condemned the said prize, or awarded the said bounty, salvage, or other

monies, may direct the payment thereof of all costs, charges, and expenses which may be chargeable against the same, or which may have been incurred by the captor, his attorney, or agent, after such costs, charges, and expenses shall have been taxed or allowed by the registrar of such court or his deputy; and the balance of such prize, bounty, salvage, and other monies shall thereupon, and after the time for appealing shall have expired, forthwith be distributed by the lords of the admiralty to and amongst the persons entitled thereto, after the same shall have been notified in the *London Gazette*.

VII. The lords of the admiralty, or any party claiming any interest in the proceeds of any prize, or in any bounty, salvage, or other monies payable and distributable under the provisions of this act, may, prior to the distribution thereof, resort to the high court of admiralty of England for the purpose of obtaining the judgment of the said court in that behalf, and the judge of the said court shall proceed to hear and determine the same, as also any question of joint capture which may arise thereon; and such court shall have and exercise full power, authority, and jurisdiction throughout her Majesty's dominions, and may enforce any decree or sentence of any vice admiralty court; and all vice admiralty courts within her Majesty's dominions are hereby empowered, directed, and required to enforce upon all persons within their respective jurisdictions all orders whatsoever of the high court of admiralty of England relating to any matter arising under the provisions of this act.

Parties claiming benefit under this act may resort to the court of admiralty.

VIII. The judge of the high court of admiralty of England may, on the application of the lords of the admiralty, or any persons interested in the proceeds of any prize, or in any bounty, salvage, or other monies, and on an affidavit that the proceeds of any prize or of any bounty, salvage or other monies payable and distributable under the provisions of this act, or any papers or books relating thereto, are in the possession of any person, compel by process of the court, and by monition and attachment, the production thereof, and the paying and transferring of such proceeds into the naval prize account as aforesaid, and the answering to such interrogatories touching the same as the court may approve, and may make such order in the premises touching and concerning the same, and the costs of such proceedings, as to it shall seem meet.

High court of admiralty of England may compel production of proceeds, &c.

IX. Any captor, or other person who shall acquire or retain the proceeds of any prize, bounty, salvage, or other monies contrary to the provisions of this act, except for reasonable cause to be allowed by the court of admiralty,

Penalty of one pound per cent. per month on retaining pro.

ceeds contrary
to this act.

shall pay interest thereon at the rate of one pound per centum per month for such time as the same shall so be in his custody or possession, and such interest shall be deemed to be part of such proceeds, and be paid and applied accordingly.

Power to allow
in paymaster
general's
accounts cer-
tain sums
without the
production of
vouchers in
detail.

X. Whereas her Majesty's paymaster general is required to make up, and transmit to the commissioners for auditing the public accounts, accounts of the receipts and expenditure within his department: And whereas numerous payments are made by her Majesty's paymaster general by way of imprest and upon account, under the authority of orders drawn upon him by the heads of departments in favour of accountants and other persons, who subsequently account to such department for the detailed application of such respective advances: And whereas numerous other payments are made by her Majesty's paymaster general upon orders in like manner issued, the vouchers for which are examined by the department from which such orders are severally issued, and many of which vouchers are necessarily retained by such department: And whereas it is expedient that the commissioners for auditing the public accounts should be empowered to allow and pass payments in the accounts of her Majesty's paymaster general in manner hereafter provided: Be it enacted, that the commissioners for auditing the public accounts may allow and pass as final payments in the accounts of her Majesty's paymaster general all such sums paid and charged by him in his accounts, on production to them of the warrants, bills, orders, or other usual authorities in respect of which such payments have been made, with the acquittances or endorsements of the parties to whom such orders are made payable, whether the same be stamped or not, without requiring the production of any subordinate or other voucher in support of any such warrant, bill, order, or other authority.

Power to allow
in paymaster
general's
accounts sums
paid on certi-
ficate.

XI. And whereas certain other payments are made by her Majesty's paymaster general upon orders signed by the heads of departments, and which are vouched by persons present and witnessing the same, but no receipts are given by the parties to whom such payments are respectively made: Be it enacted, that the commissioners for auditing the public accounts may allow and pass in the accounts of her Majesty's paymaster general all such payments vouched or certified by persons present and witnessing such respective payments, without requiring the receipts of the several parties to be produced.

Power to allow
in paymaster
general's
accounts sums

XII. And whereas there are certain other cases where it has not been found practicable to produce to the commissioners for auditing the public accounts any certificates from

persons present and witnessing payments, or the receipts of the parties to whom such payments were respectively made, although such certificates or receipts have been produced to the head of the department: Now be it enacted, that the said commissioners for auditing the public accounts may allow and pass in the accounts of her Majesty's paymaster general all payments not supported by such certificates or receipts, on the production to them of returns or statements signed by the head of the department.

paid under
certificates of
heads of de-
partments.

XIII. The lords of the admiralty may from time to time make such rules, orders, and regulations as may to them appear expedient for facilitating the paying of the navy, and for distributing the proceeds of any prize, or any bounty, salvage, or other monies, as aforesaid, and for keeping the accounts and expenses in relation thereto, notwithstanding any provisions to the contrary contained in the act of the eleventh George the Fourth, chapter twenty, and fifty-fourth George the Third, chapter ninety-three, or in any other act whatsoever; provided always, that such rules, orders, and regulations are not inconsistent with the aforesaid proclamations, or with any future proclamation which her Majesty may see fit to issue in that behalf, and that the same shall not have any force or effect until they have been previously approved by her Majesty in council; and such orders in council shall be presented to parliament within fourteen days after the date thereof, or if parliament be not then sitting, within fourteen days next after the meeting of parliament; and an account showing all the receipts and expenditure on account of naval prize to the thirty-first day of March in each year, signed by the accountant general of her Majesty's navy, shall be annually laid before parliament.

Lords of the
admiralty may
by order in
council alter
the mode of
paying the
navy, and dis-
tributing prize
money, &c.

XIV. Provided, that nothing in this act contained shall extend or be construed to extend to any seizure of ships, vessels, goods, or merchandise made by any officer or officers of customs, or of inland revenue or excise, for any breach of the laws or regulations relating to the customs, inland revenue, or excise, or to trade and navigation.

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**HAYES AND HODGES, PRINTERS,
109, FETTER LANE, LONDON**

